

IRS MEMORANDUM AM 2023-006 DATED 8/18/23

The Spendthrift Trusts that IFS distribute from Benson Financial LLC and Brandley and Hammond Law firm have verbiage in the Contract Law Documents that comply with IRC 641 and IRC 643. We also have several opinion letters on these two Trusts that state compliance with 643b.

The IRS Memo talks about Promotional Material and the application of Active Business Income. Our promotional material meets the IRS Guidelines and is in accordance with several Opinion Letters on the Trusts that we distribute. We cannot vouch for the promotional material other Distributors of Spendthrift Trusts are using. We always pass-through Active Income that is then taxed on a personal tax return. IFS stresses the importance of compliance with tax law.

We believe our procedures and guidance here at IFS meet the IRS Guidelines, however there are other distributors selling Spendthrift Trusts and some of their procedures definitely do not meet IRS Guidelines (like the one referenced in the Memo).

We report ALL Income in the appropriate category; Interest, Dividends, Capital Gains, Rents, and Royalties as well as all Active (Business) Income. We do not apply IRC 643b to any Active (Business) Income and we pass-through that Active Income to the appropriate person to be reported on their personal tax return. Nor will we work with anyone who layer trusts to conceal income.

IFS uses IRC 641 to determine Taxable Income and IRC 643 to determine Distributable Net Income. IRC 641a(4) includes in Taxable Income "income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated". Accumulated in our case is taxable income held in corpus until distributed. Then IRC 643 in determining Distributable Net Income makes the following modification to Distributable Net Income in IRC 643a(4) by stating "there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law". Then IRC 643b goes on to say "items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law **shall not be considered income**".

IFS issues a statement for the Trustee to sign in which he is declaring this income to be extraordinary dividends and held in corpus until distributed.

Richard C. Stimson
Independent Financial Services Trustee

Extraordinary Dividend Law and Legal Definition

1. By USLegal at uslegal.com:

Extraordinary dividend is an irregular dividend that is **not derived from profits arising out of the ordinary course of business** (i.e. not Active Income) but that is **declared** because of unusually large income or an unexpected (i.e. Passive) increment in capital assets due to fortuitous conditions.

Extraordinary dividend is paid in cash or stock and constitutes a distribution or a capitalization of surplus profits remaining after distribution of ordinary dividends.

Extraordinary dividend is also termed as extra dividend, nonrecurring dividend, or special dividend.

2. By below references:

An **extraordinary dividend** is a special distribution of a company's profits that exceeds the **usual payout** (i.e. Active Income). It is typically declared when the company has **unexpected profits** (i.e. Passive Income) or a sudden rise in revenue¹²³. The amount of an extraordinary dividend is determined by the company's board of directors (i.e. in our case, declared by the Trustee) and is not guaranteed to be repeated in the future².

Extraordinary dividends are subject to different tax rules than regular dividends.

1 law.cornell.edu 2 dictionary.justia.com 3 lawinsider.com