
MEMORANDUM

To: Senator Cale Case, Chairman
Joint Revenue Committee
Wyoming State Legislature

From: Long Reimer Winegar LLP

Subject: Interim Topic—Tax Evasion and Wyoming Trust Laws

Date: April 14, 2022

1. Introduction

This memorandum addresses allegations regarding the taxation and secrecy of Wyoming trusts in anticipation of the Joint Revenue Committee’s April 28, 2022 meeting. Long Reimer Winegar LLP is a Wyoming estate planning law firm with offices in Cheyenne, Evanston, and Jackson. We believe our firm’s focus on estate planning and involvement with Wyoming trust legislation uniquely qualifies us to provide the Committee with information regarding the legitimacy of Wyoming trusts and their significant benefits to the state.

2. Wyoming’s trust laws do not enable tax evasion or other unlawful activity.

From the outset, we should note that many recent questions about Wyoming trusts have been based on statements made in a 2021 Washington Post article.¹ That article conflated and misconstrued a number of different common estate planning techniques and has created significant misunderstanding of Wyoming’s trust laws.

Above all, we want to emphasize that Wyoming is not a tax haven. Nothing in Wyoming law permits professionals or their clients to conceal their assets or income from taxing authorities or to otherwise illegally evade taxation. Wyoming trusts and entities must file all required federal tax returns and pay federal taxes just like in any other state. Wyoming lawyers are also subject to Treasury Department Circular 230² if they provide tax advice, as well as the Wyoming Rules of Professional Conduct.³

¹ <https://www.washingtonpost.com/business/interactive/2021/wyoming-trusts-finance-pandora-papers/>.

² <https://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

³ https://www.courts.state.wy.us/court_rule/rules-of-professional-conduct-for-attorneys-at-law/. Rule 8.4 prohibits a Wyoming lawyer from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation,” as well as “conduct that is prejudicial to the administration of justice.”

To be sure, families often use trusts, private trust companies, and limited liability companies to protect their financial privacy. Trusts are, by nature, private relationships and the vast majority of U.S. jurisdictions do not require registration of trusts with, much less disclosure of the identities of their beneficiaries to, any centralized authority. In fact, the Uniform Trust Code (adopted in some form by Wyoming and thirty-five other states) provides that trusts are not subject to continuing judicial supervision unless ordered by a court.⁴

Wyoming's legitimate privacy protections do not constitute tax evasion or other unlawful activity. The use of trusts for criminal activity generally requires use of the banking industry,⁵ which is subject to a wide array of federal anti-money laundering, Know Your Client, and antiterrorism laws, including the Bank Secrecy Act, the Money Laundering Control Act, and the USA PATRIOT Act.

Some commenters have referenced a so-called "Cowboy Cocktail," referenced in the Washington Post article, as an example of the alleged unlawful use of Wyoming trusts. No one in our firm had previously heard of this term, which is apparently drawn from a law review article citing decade-old promotional materials put out by two apparently former Wyoming lawyers.⁶

Despite the sensational headlines, the reality of Wyoming trust structures is straightforward. Traditionally, families have been forced to choose between having their trusts administered by individuals (who are exposed to fiduciary liability and may become incapacitated or die) or corporate trustees, such as large financial institutions (which charge significant trustee fees and may not understand a family's values or closely held small business interests). A private trust company, whether formed as a corporation or limited liability company,⁷ provides a useful alternative for families who want to streamline the trustee succession process while also avoiding the fees and inflexibility of an institutional trustee. These families just want to manage their own assets, rather than pay a financial institution to do it for them.

⁴ <http://tinyurl.com/ymv2fd2e>.

⁵ Private trust companies are non-depository financial entities, which cannot engage in banking business. Wyo. Stat. Ann. § 13-5-601(b)(i).

⁶ <https://perma.cc/9LT9-C8RZ>. (attached). The two lawyers named in this document are not currently listed as members of the Wyoming bar. <https://www.wyomingbar.org/for-the-public/hire-a-lawyer/membership-directory/> This promotional material using the term 'Cowboy Cocktail' was only locatable because it happened to be cited in a published law review article about divorce. See Allison Tait, *Trusting Marriage*, 10 U.C. IRVINE L. REV. 199 (2019) at note 208. (relevant portions attached)

⁷ Wyoming was the first state to authorize limited liability companies in 1977, which are now uncontroversial entities widely available throughout the United States. The Legislature has continually updated these statutes, including a comprehensive reenactment in 2010. See Wyo. Stat. Ann. §§ 17-29-101 *et seq.*

Wyoming, like Nevada and other states, does not require regulation of private trust companies because they do not provide services to the general public and therefore raise no consumer protection issue. The Wyoming Banking Commissioner has taken this hands-off approach since at least 1993,⁸ which is now codified by statute.⁹

Concerns about company secrecy have been further addressed by Congress's 2020 enactment of the Corporate Transparency Act.¹⁰ That Act requires the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) to create a confidential database of the millions of limited liability companies, corporations, and other entities formed every year under state law. Such entities include private trust companies and other entities created under Wyoming law. Unless an exemption applies,¹¹ reporting companies will be required to report beneficial ownership information to FinCEN. That information is then available for use in legitimate law enforcement investigations (e.g. tax fraud or money laundering).

Simply put, Wyoming trusts, limited liability companies, and private trust companies do not encourage the concealment of illegal activity.

3. Taxing Wyoming trusts will harm the state's standing as a trust situs while delivering little practical benefit.

Wyoming has no state income tax of any kind, whether on individuals, businesses, or trusts. This obviously provides a powerful incentive for people to relocate themselves or their wealth here.¹² While many states do not follow Wyoming's model, that is the nature of our federalist system, which permits states to experiment with different approaches to fiscal policy.

Some have suggested the Legislature investigate the possibility of taxing the income of Wyoming trusts. Such a tax would seriously hamper the state's competitiveness as a destination for family wealth. Rather than pay a new tax, high net worth families from high tax jurisdictions like New York and California will simply move their business to Delaware, Alaska, Nevada, or South Dakota.

⁸ Letter from Joseph B. Meyer, Wyo. Att'y Gen., State of Wyo., to Sue Mecca, State Banking Comm'r, Wyo. Banking Comm'n (Mar. 1, 1993). (attached)

⁹ See Wyo. Stat. Ann. §§ 13-5-601 *et seq.*

¹⁰ 31 U.S.C. § 5336. Congress adopted the CTA as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No: 116-283, Division F, § 6002.

¹¹ Exempt companies primarily include those companies which are already subject to state or federal regulation or are so large that Congress views them as posing a lesser risk of abuse.

¹² As the U.S. Supreme Court recognized in 1935, "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted." *Gregory v. Helvering*, 293 U.S. 465, 469 (1935).

In addition, the positive revenue benefit of such a tax would be heavily blunted by the Wyoming Constitution. Under Article 15, § 18, any tax on income must be accompanied by a “full credit against such tax liability for all sales, use, and ad valorem taxes paid in the taxable year by the same taxpayer to any taxing authority in Wyoming.” Siphoning sales, use, and property tax revenue is not a workable solution to the state’s fiscal issues, particularly when doing so will also dissuade families from locating their wealth in Wyoming.

Even if Wyoming were to impose an income tax on trusts, the trusts would simply move to the competitor states of Nevada, South Dakota, Alaska, or Delaware. There would be no lasting tax base for Wyoming revenue purposes. And the Wyoming businesses that thrive on trust structures (including banks, regulated trust companies, accountants, and financial advisors) would simply lose the business.

4. Conclusion

The Wyoming Legislature has worked hard to ensure that the state remains one of the best locations for both U.S. and international families to locate their wealth. It has done so in a manner that complies with federal law, fulfills the needs of Wyoming citizens, and makes Wyoming an attractive location for family wealth. This has made our state competitive with jurisdictions like Nevada, South Dakota, and Delaware for trust business. Such business benefits not only estate planning lawyers, but also several other industries in Wyoming, including banks, regulated trust companies, accountants, financial advisors, and hospitality establishments serving national and international clients when they visit the state. This is consistent with the state’s Economically Needed Diversity Options for Wyoming (ENDOW) initiative, which identifies international trust and fiduciary business as an area for study in diversifying and strengthening Wyoming’s economy.

While tax evasion and money laundering are legitimate problems, they are not enabled by Wyoming’s trust and estate laws. These laws, as well as Wyoming’s longstanding policy choice of rejecting income taxes, provide significant economic benefits to the state, while also complying with federal tax and transparency rules.

We appreciate the opportunity to provide information on these issues and are happy to appear at any of the Committee’s interim meetings to answer specific questions.

10-2019

Trusting Marriage

Allison Tait

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Trusting Marriage

Allison Tait

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protection trusts and the more states that adopt them, the less important the jurisdictional question will be.

c. New and Improved Prenuptial Agreements

Despite these recent court challenges, the enhanced protections that DAPTs offer against spousal claims in the event of divorce mean that estate and financial planners are heavily marketing DAPTs as a new and improved alternative to prenuptial agreements. In fact, trust-based premarital arrangements are quite literally being marketed as direct competitors to contract-based prenuptial agreements. The contract-based way of doing things, so the story goes, involved awkward and prolonged drafting and there were many obstacles to successful negotiation. According to one estate lawyer: “Prenuptial agreements are good, but there are numerous personal and legal issues that deter couples from actually executing a prenuptial agreement.”²⁰⁴ DAPTs, according to the same narrative, present a better and more compelling opportunity to engage in significant family wealth preservation because of the robust asset protection offered by the DAPT at divorce *and* because one soon-to-be spouse can create a DAPT without the knowledge of the other.

A major selling point for trust companies and estate planning firms in all of the nineteen states that allow DAPTs is the exceptional asset protection they can offer at divorce.²⁰⁵ Delaware trust companies advertise “extra breaks, including stronger protection from creditors and potential exclusion of assets in divorce proceedings.”²⁰⁶ Another law firm suggests the use of DAPTs, because “utilizing Domestic Asset Protection Trusts in the pre-marital planning process greatly reduces the chances of a successful attack resulting in the equitable distribution of property brought to the marriage.”²⁰⁷ Some estate planners, in a more whimsical vein, give names to their financial products. For example, the “Ultimate Cowboy Cocktail” is a Wyoming LLC that is owned by a Wyoming Asset Protection Trust and administered by a Wyoming Private Trust Company, and it is advertised as

204. Richard Shapiro et al., *Domestic Asset Protection Trusts v. Prenuptial Agreements*, BLUSTEIN, SHAPIRO, RICH & BARONE, LLP (Oct. 14, 2016), <https://www.mid-hudsonlaw.com/blog/domestic-asset-protection-trusts-v-prenuptial-agreements/> [perma.cc/B89F-UK3J]. Of course, “The safest bet, say advisers, is to combine asset-protection structures with prenuptial agreements—what lawyers call the ‘belts and suspenders’ approach.”

205. These states include Alaska, Connecticut, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

206. *Dynasty Trusts Let U.S. Wealthy Duck Estate, Gift Taxes Forever*, BLOOMBERG NEWS (July 28, 2011), <http://www.fa-mag.com/news/dynasty-trusts-let-us-wealthy-duck-estate-gift-taxes-forever--7913.html> [perma.cc/VQR4-R5Q4]. In states that have not adopted the UTC, local rules do not generally dictate any exceptions for spouse creditors.

207. *Use of Asset Protection Trusts in the Pre-Marital Planning Process*, MCKONLY & ASBURY, <http://www.macpas.com/use-of-asset-protection-trusts-in-the-pre-marital-planning-process/> [perma.cc/S2JX-SWHB?type=image] (last visited July 16, 2017).

offering strong asset protection during divorce proceedings.²⁰⁸ Marketing for Nevada trust companies is simple: “Nevada is one of two states that have no exception creditors. This includes divorcing spouses.”²⁰⁹ Doubling down on this focus on asset protection at divorce, trust companies and law firms also consistently characterize spouses as overreaching and unduly entitled.

In addition to emphasizing heavy-duty asset protection, trust companies and estate planners also market DAPTs by highlighting that—unlike prenuptial agreements—they can be created by one fiancé without the knowledge of the other. From this perspective, DAPTs are a good alternative to pre-marital contracts because they help fiancés avoid “awkward” conversations about money and the retention of separate property. A dynasty trust in Delaware, for example, serves “as a substitute for prenuptial agreements, offering protection of the pre-marital estate of an individual without negotiations over a prenuptial agreement.”²¹⁰ One estate lawyer explains the problem with prenuptial agreements: “The bottom line is that while many couples are delighted to share their lives together when entering into a marriage, they may feel uncomfortable sharing information about their net worth.”²¹¹ A commentator writing in the American Bar Association newsletter also describes the utility of the DAPT by underscoring the “low-stress” angle: “This technique is very appealing to many individuals who, although [they] would like to protect their assets from their future spouse . . . would like to do so quietly and without any hassle.”²¹²

Putting a more positive spin on the desire to avoid potentially uncomfortable conversations about finances, estate planners and trust firms also promote the DAPT as the “romantic” alternative. Prenuptial agreements, the advertisements pronounce, kill the romance and joy of wedding planning. DAPTs, on the other hand, keep the romance alive. The following is typical of the DAPT promotion literature:

[O]ne individual can enact premarital asset protection planning without his or her fiancé’s involvement. Due to the unromantic pitfalls of negotiating a family property settlement the week of the wedding, some proactive

208. The Seven Tiers of Asset Protection Planning: http://appersondev.melloncg.net/images/7_Tiers_of_Asset_Protection_Planning.pdf [perma.cc/9LT9-C8RZ] (#5 is the Cowboy Cocktail and #6 is the Ultimate Cowboy Cocktail).

209. *The 4 Things You Need to Know About a Nevada Asset Protection Trust*, PREMIER TRUST, <https://premiertrust.com/2016/12/30/the-4-things-you-need-to-know-about-a-nevada-asset-protection-trust/> [perma.cc/M68T-C9QZ] (last visited July 17, 2017).

210. Northern Trust, *Delaware Trusts: Safeguarding Personal Assets* (2019), <https://www.northerntrust.com/documents/white-papers/wealth-management/research/delaware-trusts-safeguarding-personal-wealth.pdf?bc=25683840> [perma.cc/5SJ5-XE3H].

211. Shapiro, *supra* note 204.

212. Kalimah Z. White, *Domestic Asset Protection Trusts: An Alternative to Prenuptial Agreements* 2 (Feb. 2006), http://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/domestictrust.html [perma.cc/W9B7-4657]. Of course, “The safest bet, say advisers, is to combine asset-protection structures with prenuptial agreements—what lawyers call the ‘belts and suspenders’ approach.”

ASSET PROTECTION PLANNING

Above Ground & Below Ground

Cecil D. Smith, JD & Carol H. Gonnella, JD



There are **7 Tiers** of Asset Protection while you are Above Ground

While you are living, one or more of the following 7 strategies can be utilized to protect your assets:

- 1. Zip Your Lips.** Perhaps the most important thing you can do to protect your wealth is to zip your lips. Remember the phrase: "*Loose lips sink ships.*" It's true ... don't shout your wealth. Shred your mail. Beware of what you post on Facebook. Remove your name and address from your magazines. Identity theft is rampant. Total anonymity should be your goal. They can't steal or take what they don't know about.
- 2. Existing Laws.** Take advantage of existing state and federal laws that protect certain assets, such as life insurance policies, annuities, retirement accounts and Tenancy by the Entirety property. Many of these laws, including homestead exemptions, are state specific.
- 3. Liability Insurance.** Obtain or increase your professional liability insurance and/or umbrella coverage. How much liability insurance should you have? That question is impossible to answer because it depends on how badly your hurt someone. For example if you have an automobile accident, it's your fault, your have \$1,000,000 of liability insurance and a teenage passenger in the car you hit breaks her leg, you have enough insurance. Alternatively, if you put that teenager in a wheelchair for the rest of her life, you probably cannot have enough insurance to cover the damages you caused. You could lose everything you own that is not already protected under existing state or federal laws. In cases like this, you need to take the next step ... see strategies 4, 5, 6 & 7 below.
- 4. LLCs.** The Wyoming Close LLC is used to protect the assets in the LLC. The only weakness to any LLC is that the LLC doesn't protect actual distributions (or income stream) made to the owner-members. A creditor could seize the distributions made to an owner-member, and even obtain a charging order against his or her ownership interest in the LLC. A charging order requires the managers to pay the debtor-member's judgment creditor directly, if (and only if) the managers vote to make a distribution to members.
- 5. The Cowboy Cocktail (LLC + DAPT).** When a Wyoming LLC is owned by a Wyoming Domestic Asset Protection Trust to protect the distributions (income stream) from the LLC, Cecil and Carol call this strategy the Cowboy Cocktail.
- 6. The Ultimate Cowboy Cocktail (LLC + DAPT + PTC).** When a Wyoming LLC is owned by a Wyoming Asset Protection Trust, that is administered by a Wyoming Private Trust Company, Cecil and Carol call this strategy the Ultimate Cowboy Cocktail.
- 7. Off-Shore Asset Protection Plans.** Do planning as indicated above, then move them off-shore, where US Courts will not have jurisdiction over your trustees and managers. Or, start out off-shore by forming your LLCs and Asset Protection Trusts in an off-shore jurisdiction.

(Above Ground)

(Below Ground)



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March 1, 1993

Sue Mecca
State Banking Commissioner
Wyoming Banking Commission
Department of Audit
Herschler Building
Cheyenne, Wyoming 82002



Dear Commissioner Mecca:

I have received and reviewed your request for an opinion from this office regarding the provisions of W.S. 13-5-101 through 13-5-110 relating to trust companies. Specifically, you have inquired what companies are required to incorporate and be supervised under those statutes.

Prior to the 1977 legislative revision of Title 13, Wyoming Statutes, the Wyoming Statutes expressly limited state regulation of trust companies to those trust companies which transacted loans and trust business with the general public. The 1977 legislative revision eliminated such language, but by the title of the revision, the revision was only intended to eliminate duplications, redundancies and archaic provisions and not make substantive changes (Chapter 67, 1977 Session Laws of Wyoming). A 1977 Attorney General opinion (A.G. 77-30) interpreted the provisions of W.S. 13-5-101 et seq., and held that unless a trust company intended to exercise the powers enumerated in W.S. 13-5-101(b), it need not be regulated by the state of Wyoming and could incorporate under the general corporation statutes in Title 17, Wyoming Statutes.

I believe the 1977 opinion of this office correctly interprets the legislative intent behind W.S. 13-5-101(b). This intent is confirmed by SEA 18, 1993 Legislative Session, whereby "Trust Business" is defined to be the holding out of a person (which includes corporations and other entities) to the public at large that the person will act as a trustee.

PETER J. MULVANEY, ADMINISTRATOR - GENERAL

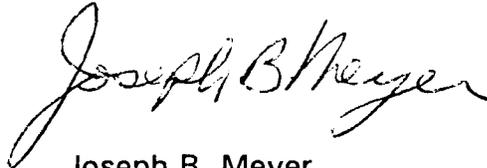
SYLVIA LEE HACKL, CRIMINAL ADMINISTRATOR
MARY B. GUTHRIE, NATURAL RESOURCES ADMINISTRATOR

MICHAEL L. HUBBARD, CIVIL ADMINISTRATOR
JOHN W. RENNEISEN, LITIGATION ADMINISTRATOR

Sue Mecca
March 1, 1993
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Unless a corporation exercising trust responsibilities engages in trust operations for the general public under W.S. 13-5-101(b), and not under the exception and exclusions provided under W.S. 13-5-101(j), the state of Wyoming through the Banking Commissioner does not have any powers to regulate same. Conversely, a corporation incorporated under the Wyoming Business Corporation Act and not exercising powers under W.S. 13-5-101(b), is not subject to regulation by the Banking Commissioner and W.S. 17-16-301(b) does not apply.

Sincerely,

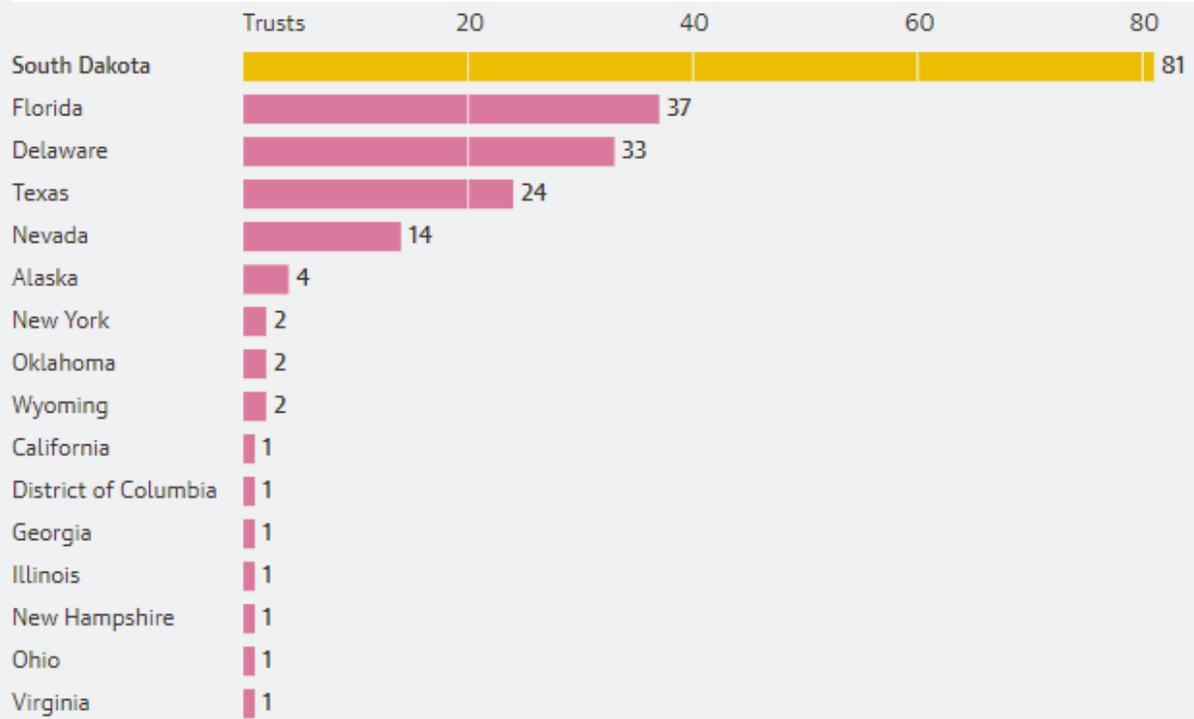
A handwritten signature in cursive script that reads "Joseph B. Meyer". The signature is written in dark ink and is positioned above the typed name and title.

Joseph B. Meyer
Attorney General

JBM:cc

c: Ralph Thomas

South Dakota is the US state with most trusts identified in the Pandora papers



Guardian graphic

<https://www.theguardian.com/news/2021/oct/04/pandora-papers-reveal-south-dakotas-role-as-367bn-tax-haven>