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Asset Management and Protection

The "Pure Trust" Scam

You can almost hear the pitchman barking: "Hurry, hurry, hurry! It's the legal and tax deal of the century! Pay no taxes! Protect your assets from lawsuits! Escape creditors! Gain complete financial privacy!" And all for the bargain price of $225...or $600...or $4,500.

A quick search on the Net turns up hundreds of pages of information from sites offering to sell you the know-how to set up your own "pure trust" without the need for an attorney (who would, of course, tell you it's a scam).

Also known as the "common law trust," the "constitutional trust" and by a dozen other names, the pure trust is so outrageous that it would be humorous if the results weren't so disastrous:

- You could spend hundreds or thousands of dollars setting up a pure trust (or several) that has no legal or financial value.
- If the Internal Revenue Service catches on while you're alive, you'll have to pay all of the back taxes, interest and penalties on income you didn't declare because you thought it belonged to the trust.
- If you die before the IRS or creditors challenge your trust, your heirs will receive the unpleasant and unexpected news that, yes, all the taxes, interest and penalties you avoided during life will be taken out of your estate before they get a penny.

- **All the assets in your pure trust were really owned by you anyway, so they have to go through probate, creditors get a shot at them and they are subject to estate taxes.**

How did this pure-trust hoax become so widespread? You can thank the Internet for that. Although the IRS has been ruling on these since the 1980s, and perhaps even before, it has only been in the last few years that pure-trust promoters have hit the mother lode by trolling for the gullible online.

Their Web sites assert that pure trusts are perfectly legal and work because the U.S. Constitution says that no state can impair the "obligation of contracts." That's true, but the federal government can and does regulate contracts.

Empty promises:
Let's look at some of the promises found on these Web sites (often repeated verbatim from site to site):

Promise: Your pure trust will be completely exempt from taxes. You won't pay a gift tax when you transfer assets into the trust. The pure trust will never owe any income tax, and no estate tax will be imposed on the trust at your death

Fact: True! That's because your pure trust does not exist as a legal entity. It's not a trust, as the IRS explains: "A so-called pure trust is an arrangement that purports to create a separate entity without actually altering the taxpayer's control over the property or business transferred to the pure trust. Generally, the trust issues certificates that represent ownership of the trust...The pure trust may be treated as a sham for federal tax purposes depending on the trust terms and its actual operation. Therefore, the taxpayer who transfers property or business to the trust must report all the income earned by the trust and is liable for the taxes."

So you buy the documents, go through the aggravation of setting up your pure trust, change the name of the owner of your assets to the trust, and it doesn't make any difference because you're still the legal owner. You're not giving the assets away, so there's no gift tax. The trust won't owe any income taxes, you will. And no estate tax will be imposed on the trust at your death, because the trust doesn't exist.

Promise: You don't need a separate Social Security number, so you're assured of complete secrecy for assets in the trust.

Fact: True! That's because the trust doesn't exist. You still own all the assets, so they

will show up on all of your credit reports. Many of these Web sites will issue their own "identification number," which is the same number of digits as a Social Security or taxpayer identification number. This would seem to encourage unsuspecting pure-trust grantors to list this fake number as the tax-reporting number when filling out account forms for their new trust, which constitutes criminal tax fraud and opens up the possibility of prosecution and jail time.

Promise: The IRS has actually sent letters saying that pure trusts are "totally tax exempt."

Fact: True! A letter displayed on several Web sites reads, "We cannot process your application for an Employer Identification Number. A pure-trust organization has no tax requirements, therefore an Employer Identification Number is not required."

The pure trust has no tax requirements because it doesn't exist as a separate legal entity. It's as if I decided to set up an account with my nickname "Ginger," instead of my legal name "Virginia." Same person, same Social Security number. I can't get a separate Social Security number for Ginger Applegarth because I am not a separate person or legal entity from Virginia Applegarth, as handy as that would be at times.

Promise: Your creditors, or your divorcing spouse, can't get at the assets in your pure trust.

Fact: True! That's because there are no assets in your trust. You own them, so your creditors or divorcing spouse would come after you instead.

Promise: Your pure trust is not liable for your debts and you aren't responsible for any liabilities incurred by the pure trust.

Fact: True! The trust doesn't exist, so it can't be liable for your debts. You aren't responsible for any liabilities incurred by the pure trust, because it can't incur any. If some lender were idiotic enough to lend money to the trust, it would be redeemed by finding out that, in fact, you're responsible.

A 1997 IRS Notice on Abusive Trust Arrangements (97-24) talks about pure trusts in detail. The proliferation of pure-trust Web sites is causing the IRS to sit up and take notice, and now the agency is actively pursuing these operators.

What does that mean to you as a potential "client" of one of these scam artists? If the IRS decides to investigate the Web site you buy your pure-trust documents and advice from, it can go through the company's records to find information on customers and then come after you.

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