

***TTN CONFERENCE***

***November 30, 2017***

**VEGAS IS NOT JUST FOR GAMBLERS:  
THE BENEFITS AND OPPORTUNITIES OF NEVADA  
DISCRETIONARY TRUSTS FOR NRAS**



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# CIRCULAR 230 NOTICE



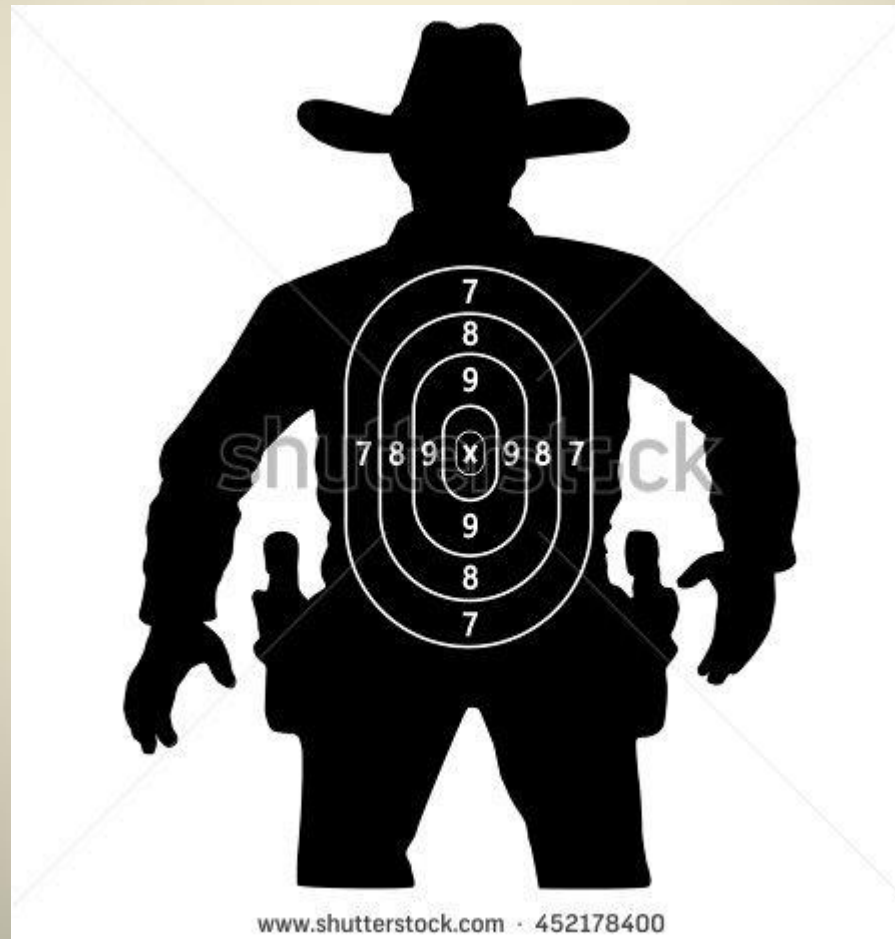
The information contained herein is provided solely for informational purposes, is not intended to constitute the rendition of legal advice, and cannot be used for the purposes of avoiding penalties that may be imposed under the Internal Revenue Code.

# OUTLINE FOR DISCUSSION

- Determining Client Objectives
- Understanding the structure of the FICGNDNGT  
“Foreign Irrevocable Completed Gift Nevada  
Discretionary Non-Grantor Trust”
  - Why Nevada
  - Pre-Immigration Considerations
  - Tax and Informational Reporting

# DETERMINING CLIENT OBJECTIVES

## “THE TARGETS”



# CLIENT OBJECTIVES

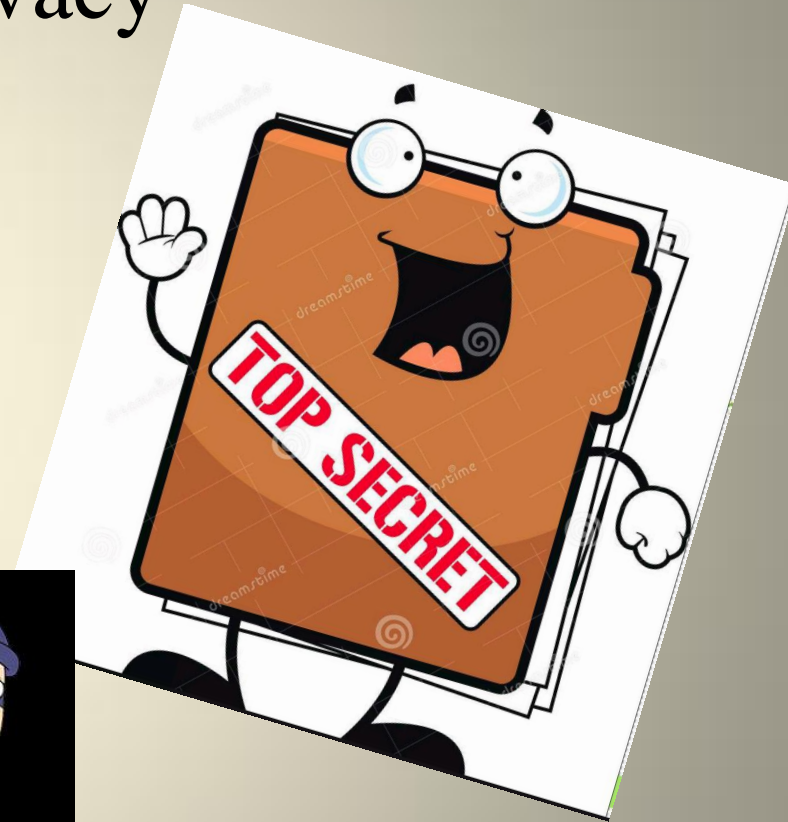
Tax minimization during life and at death





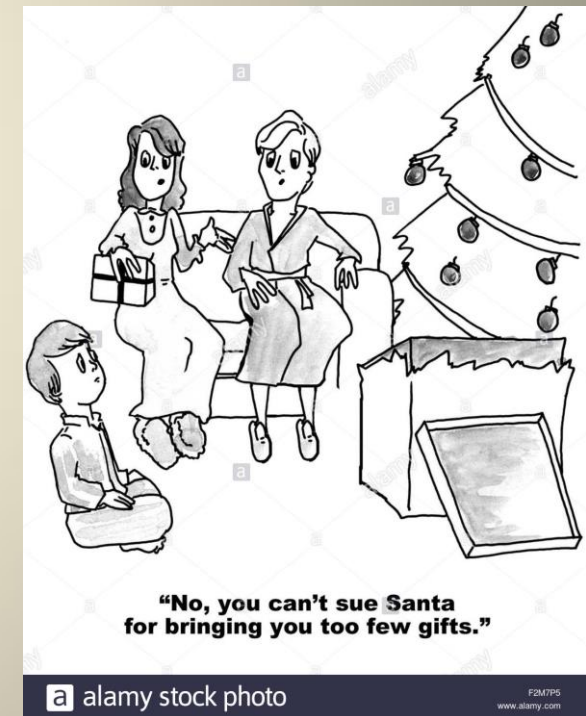
# CLIENT OBJECTIVES

## Anonymity & Privacy



# CLIENT OBJECTIVES

## Asset Protection



# CLIENT OBJECTIVES

## Pre-Immigration Tax Planning





# CLIENT OBJECTIVES

## Control and Access to Funds



# CLIENT OBJECTIVES

A discount on their bill



# FICGNDNGT

**FICGNDNGT – Foreign Irrevocable  
Completed Gift Discretionary Non-  
Grantor Nevada Trust**



# OUR PLAYERS

- Non-Resident Aliens (from U.S. perspective)
  - Settlor, beneficiaries, protector
- Trustee is domestic (U.S.)
- Assets held outside of home country



# DOMESTIC (U.S.) TRUST

## FIRST PRONG – COURT TEST

**A U.S. court is able to exercise primary supervision  
[See Treas. Reg. 301.7701-7(c)]**

- 50 States and D.C.
- Court must have authority under law to render orders or judgements over the trust
- Court must have authority to determine substantially all aspects of administration for the trust
- Court must have authority to enforce terms of the trust under applicable law





# DOMESTIC TRUST

## SECOND PRONG – CONTROL TEST

**U.S. persons must have authority to control all substantial decisions of the Trust [See Treas. Reg. 301.7701-7(d)]**

- U.S. person may be individual, entity, estate, or trust
- Substantial decisions include, but are not limited to:



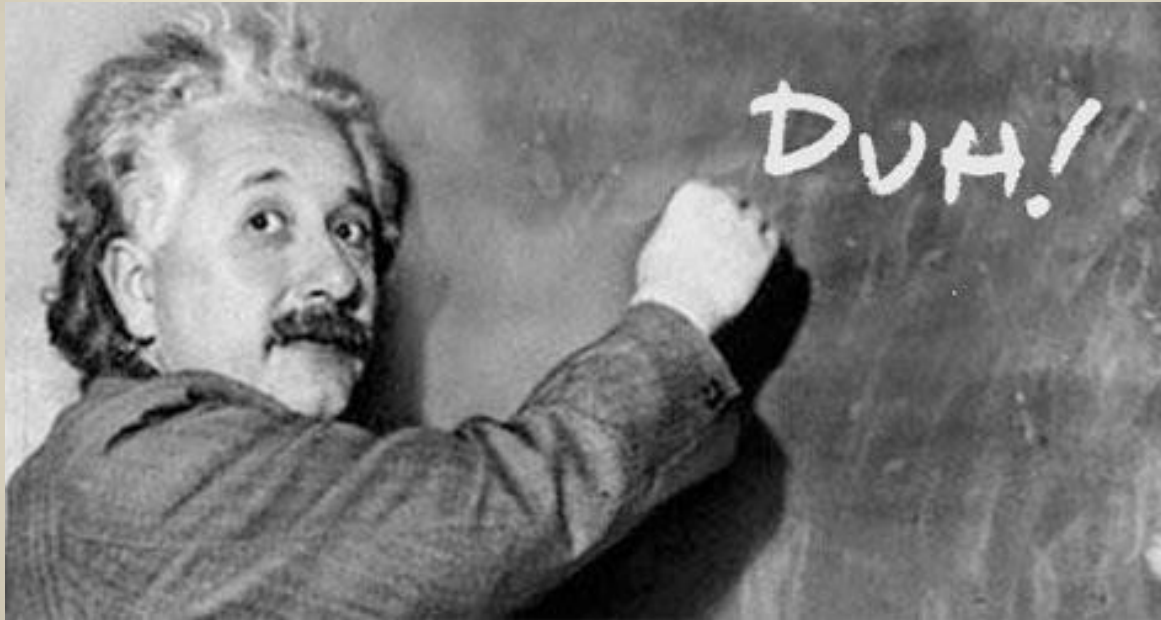
- Whether to distribute income or corpus
- Amount of distributions
- Selection of a beneficiaries
- Whether to terminate the trust
- Whether to replace a trustee

- Ministerial decisions (i.e. bookkeeping) may be made by a non-U.S. person

# FOREIGN TRUST

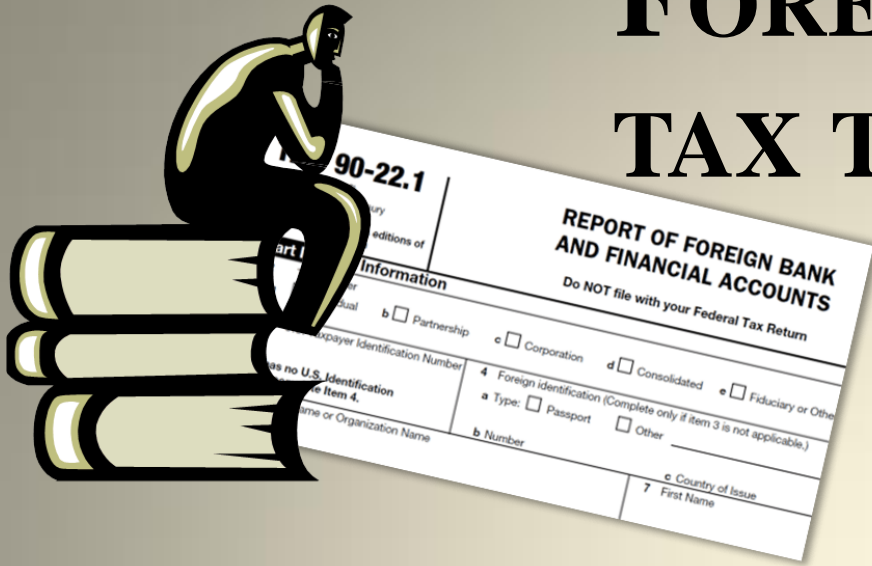
Any Trust that is not domestic

[See IRC 7701(a)(31)(B)]



Usually achieved through a foreign “trust protector”  
having the power to remove and replace the trustee

# FOREIGN TRUST TAX TREATMENT



- A foreign trust is treated as a foreign individual for income tax purposes
- Although foreign under the tax code, it is nonetheless required to file FBARs if it holds foreign accounts that meet the definition
- Where the foreign trust has U.S. beneficiaries, income taxation of undistributed net income (i.e., retained income from previous years) is subject to punitive treatment under the throwback rules - This is something to avoid

# IRREVOCABLE

- Once settled, the settlor relinquishes the authority to alter, revoke or independently revert back ownership of the assets
  - Spendthrift provision for creditor protection
- The settlor will part with dominion and control over the assets in the trust in order to make a completed gift [See Treas. Reg. §25.2511-2(b)]
  - Completed gifts are excluded from the settlors estate at time of death



# COMPLETED GIFT

- **Important in Pre-Immigration**
  - Want to make sure that the funding of the trust is deemed a completed gift so when the Settlor becomes domiciled in the U.S., the corpus of the trust does not fall subject to the U.S. transfer tax rules.
- **Considerations**
  - Regular or frequent distributions (even if not to the Settlor)
  - Appearance of Settlor having control or decision-making authority (tricky)
  - Indirect “control” through power to remove and replace Trust Protector is generally acceptable, but should be arm’s length.





# DISCRETIONARY

- Appoint an independent trustee (Nevada trust company) with complete autonomy to make distributions to the class of beneficiaries
- However, if a grantor is a permissible beneficiary of the trust, proper structuring is necessary to avoid possible:
  - Potential Estate inclusion (i.e., incomplete gift)
  - Potential reduction in asset protection (retain fixed entitlement to trust assets or corpus)



# NON-GRANTOR

- Grantor Trust Rules – Sections 671 through 679
  - Settlor (Grantor) deemed owner for U.S. income tax purposes.



- Default under Section 672(f)(2)
  - Power to revest in Settlor
  - Not limited to lifetime distributions to Settlor and Settlor's Spouse
  - In Pre-Immigration context, beware Section

# ACCEPTABLE US JURISDICTION

## DOMESTIC ASSET PROTECTION TRUST STATES

YEAR DAPTS FIRST ALLOWED

<b>WEST VIRGINIA</b>	<b>2016</b>
<b>MISSISSIPPI</b>	<b>2014</b>
<b>OHIO</b>	<b>2013</b>
<b>VIRGINIA</b>	<b>2012</b>
<b>HAWAII</b>	<b>2010</b>
<b>NEW HAMPSHIRE</b>	<b>2009</b>
<b>TENNESSEE</b>	<b>2007</b>
<b>WYOMING</b>	<b>2007</b>
<b>MISSOURI</b>	<b>2005</b>
<b>SOUTH DAKOTA</b>	<b>2005</b>
<b>OKLAHOMA</b>	<b>2004</b>
<b>UTAH</b>	<b>2003</b>
<b>NEVADA</b>	<b>1999</b>
<b>RHODE ISLAND</b>	<b>1999</b>
<b>DELAWARE</b>	<b>1997</b>
<b>ALASKA</b>	<b>1997</b>

*SOURCE: WILMINGTON TRUST CO.*

# WHY NEVADA

- **Dynasty Trusts:** 365 year life
- **Asset Protection**
  - Two year statute of limitations for creditor claims for self-settled trusts
  - No exceptions to protection after statute has run
- **Trust Protectors**
  - Detailed law for trust protectors and their authority with respect to the trust
- **Decanting**
  - Nevada law allows the trustee leverage to pour over assets into a new trust if the law change
- **Nonjudicial Settlement Agreements**
  - Alternative means to alter aspects of the trust
- **No State Income Tax**
  - If properly structured, a Nevada trust will have no state income tax

# WHY NEVADA

- All the benefits under the previous slide
- Our firm is licensed in Nevada, so we are partial
- The client always has an excuse to go to Vegas – “I have to meet with my Trustee”

Wyoming



Alaska



Delaware



South Dakota

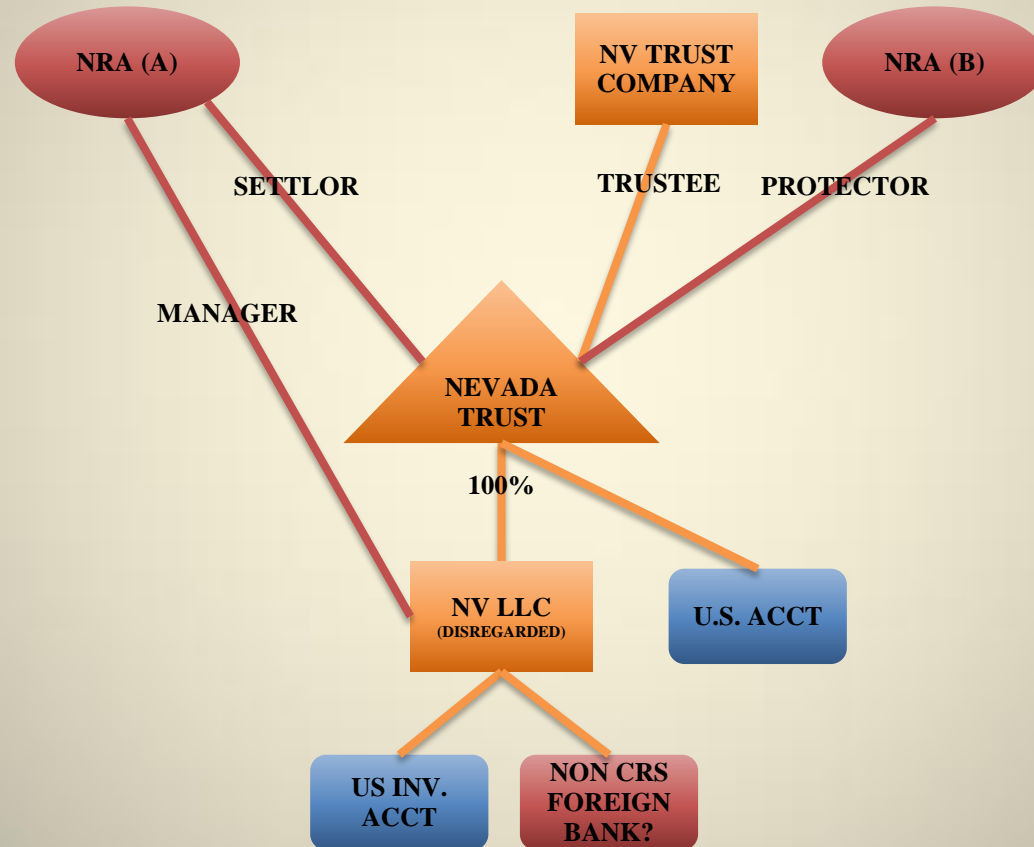




# WHY NEVADA LAS VEGAS!!!



# SAMPLE NEVADA STRUCTURE



# Pre-Immigration Considerations

- If planning to move to U.S., beware of Section 679(a)(4)(a)
  - Reclassifies trust as Grantor with respect to assets contributed within 5 years of immigration.
  - Might be a good thing...
- Throwback Rules under Sections 665-668
  - Should examine a reclassification of the trust as domestic if any beneficiary becomes U.S. person to avoid implication of UNI regime.
  - Other solutions exist.

# U.S. REPORTING REQUIREMENTS

- Under this structure, the Trust is not a “U.S. Person” and will only be subject to taxation on U.S. Source Income
  - But no capital gains tax except for Real Estate
  - Eligible to make portfolio interest loans
  - Beneficiaries subject to income tax only to the extent of distributions of current income
- The trust itself is the “Taxpayer” and, therefore, the beneficiaries will not be subject to reporting except when receiving distributions of current income.

# CRS & FATCA

- The Trust situs is the U.S. – a jurisdiction not subject to CRS
- The U.S. applies a different standards for determining who is a U.S. person
  - For FBARs a U.S. person is defined as any entity, including a trust that is created, organized or formed under the laws of the U.S., its States, Territories, Possessions etc. [See 31 CFR 1010.350(b)(3)]
  - For Income tax purposes, including Form 8938, in order for a trust to be a U.S. person it must meet the Court and Control test. [See IRC 7701(a)(30)(E)]
- Therefore, any foreign bank or securities account owned by the U.S. settled trust will need to be reported on an FBAR
- However, Form 8938 nor any other income tax Forms would be required if there is no U.S. source income and no U.S. beneficiaries
- If the investments are maintained in the U.S. (i.e., no foreign financial assets), then the Trust files an income tax return, but there would be no int'l filings.



# THE END...



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