

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1596

Date: 02-Feb-10
From: Steve Leimberg's Estate Planning Newsletter
Subject: **Oshins: The Best States for Trusts**

Steven J. Oshins is a member of the Law Offices of **Oshins & Associates, LLC** in Las Vegas, Nevada. Steve is a nationally known attorney who is listed in The Best Lawyers in America® and has been named one of the Top 100 Attorneys in Worth magazine. He is one of the most innovative attorneys in the country as demonstrated by how active he has been in writing some of Nevada's most important estate planning and creditor protection laws, including the law making the charging order the exclusive remedy of a judgment creditor of a Nevada LLC and LP, the law changing the Nevada rule against perpetuities to 365 years and the law making Nevada the first and only state to allow a Restricted LLC and a Restricted LP. He can be reached at 702-341-6000, x2 or at soshins@oshins.com. His law firm's web site is <http://www.oshins.com>.

In his commentary, Steve reports on a recently published chart called "**The Best States for Trusts**" that has been provided by **Jerry Cooper**. Jerry is a marketing consultant and relationship manager for a Massachusetts based financial institution consulting firm. Jerry publishes **The Trust Advisor** (www.thetrustadvisor.com), a weekly trust industry newsletter. The Trust Advisor carries news and features of interest to estate planners and financial advisors. In addition, Jerry's firm, **Advisors Institutional Services** (www.advisorsinstitutional.com), helps wealth managers, financial advisors, broker-dealers, law firms, mutual fund companies and pension plan administrators create and operate trust companies in Nevada and South Dakota – both tier one states in the chart provided below. Advisors Institutional publishes a complimentary white paper called *Launching a South Dakota Trust Company Guide to Operating Nationwide* which is available at www.advisorsinstitutional.com/s/southdakotareports.asp.

The chart provided by Jerry Cooper compares and ranks the states by dividing them into different tiers. The story describing the ranking methodology can be read at <http://thetrustadvisor.com/news/states>.

We are excited that Jerry was kind enough to authorize **LISI** to include his chart in this newsletter and to allow us to permanently house this chart under the blue "State Laws" tab on the **LISI** homepage. In the upper right-hand corner of the **LISI** homepage under "State Laws" simply click on the "Best States for Trusts" tab in the drop-down menu.

THE CHART:

The Best States for Trusts							
Tier	State*	State Income Tax	Directed Trust Statute	Asset Protection Trust	Dynasty Trust Ability	Number of Trust Cos.	Time Zone (from NY)
1	Alaska	No	Yes	Yes	1000 yrs.	3	(-) 4
1	Delaware	Residents	Yes	Yes	Perpetual	32	(-) 0
1	Nevada	No	Yes	Yes	365 yrs.	26	(-) 3
1	South Dakota	No	Yes	Yes	Perpetual	39	(-) 1 / 2
2	Florida	No	No	No	360 yrs.	9	(-) 0
2	New Hampshire	Residents	Yes	Yes	Perpetual	19	(-) 0
2	Wyoming	No	No	Yes	1000 yrs.	2	(-) 2
3	Colorado	Yes	Yes	Yes	1000 yrs.	7	(-) 2
3	Idaho	Yes	No	No	Perpetual	3	(-) 2
3	Ohio	Residents	No	No	Perpetual	2	(-) 0
3	Utah	Yes	No	Yes	1000 yrs.	2	(-) 2
3	Wisconsin	Residents	No	No	Perpetual	4	(-) 1
*States: links to State Trust Statutes					Data: January 2010		
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COMMENT:

Jerry's chart does an excellent job of ranking the state trust laws. He selected the twelve states that he felt have the best laws. Certainly these are not the only states that have good laws, but after researching a number of important factors, he grouped the states into three tiers. **One very interesting component is that he included a column listing the number of trust companies in each of the states. This is the first time I have seen this done.**

The number of trust companies in a particular jurisdiction is a function of

whether the state has favorable trust laws, whether the state has favorable requirements for the formation of trust companies and the length of time the favorable trust and trust company laws have existed. As an expert in the formation of trust companies, I found it interesting that Jerry built this perspective into the chart.

I was not surprised by the four Tier 1 states, Alaska, Delaware, Nevada and South Dakota. Those four states seem to be the most proactive in trying to attract trust business through making their tax and trust laws as favorable as possible. I was surprised to see that Alaska has so few trust companies; however, I do not believe that to be a negative reflection on its standing as one of the Tier 1 states since I have always believed it to be one of the best.

I was also not surprised by the three Tier 2 states, Florida, New Hampshire and Wyoming. Those three states have all been historically proactive in trying to attract trust business.

I believe that there is a large drop-off after Tier 2. The Tier 3 states are all states that have in part enacted some great law, but which do not attract much out of state trust business in comparison with the Tier 1 and Tier 2 states. This is often because the state has a state income tax since that is always a strong consideration in the choice of jurisdiction for a trust. There are a number of other states that have enacted favorable dynasty trust laws or asset protection trust laws that did not make Jerry's chart. As with any chart, this is subjective, so just because a state did not make the chart does not mean that it necessarily has bad laws.

SUMMARY:

Jerry's chart is a great reminder to estate planners of the importance of forum shopping for a client to select the best state in which to create a trust. All too often, the estate planner fails to suggest to a client that the client establish a trust in another jurisdiction, whether to take advantage of the state's favorable dynasty trust rules or to take advantage of its favorable self-settled asset protection trust laws.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Steve Oshins

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