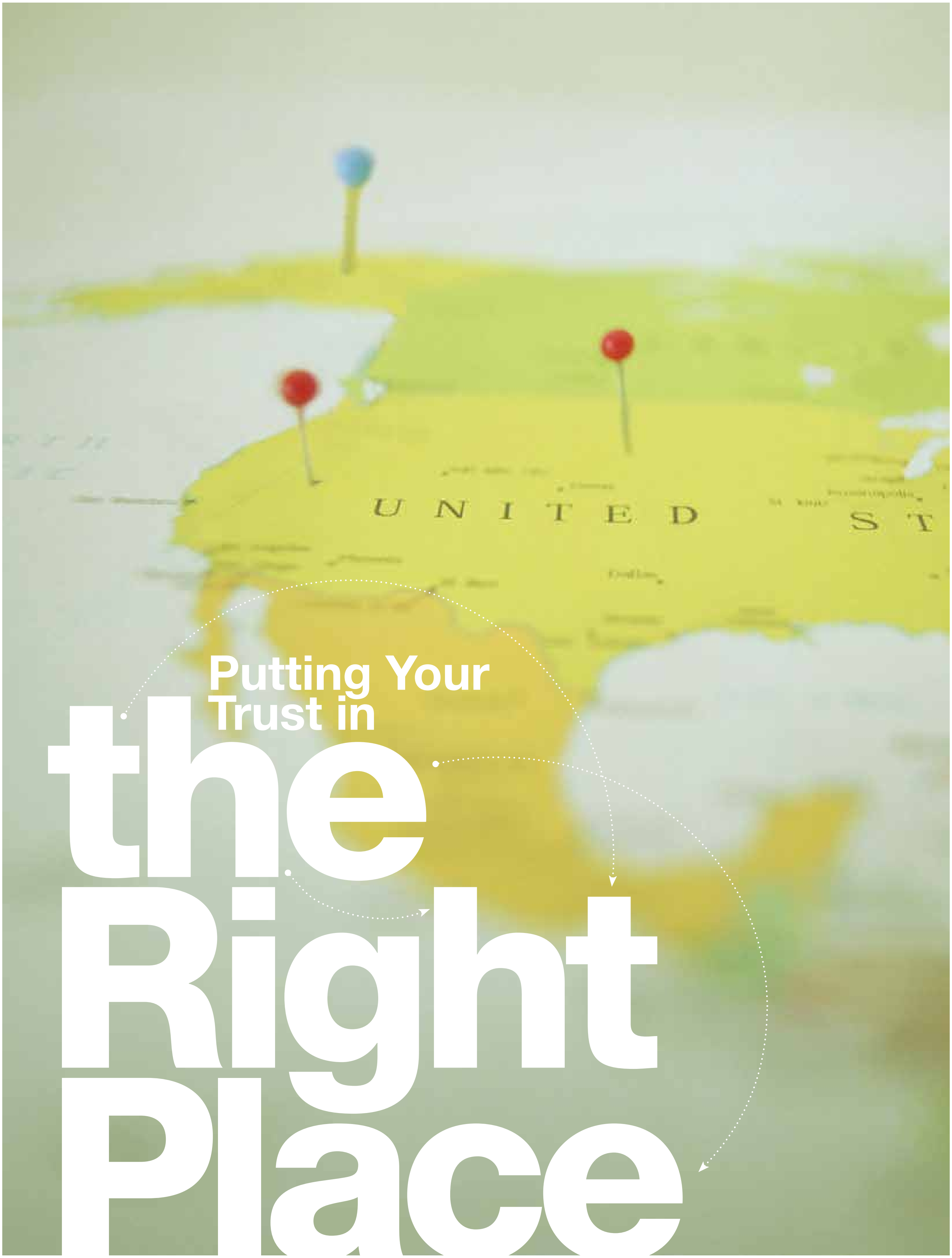



# Putting Your Trust in the Right Place

**Much is said about asset allocation, but asset location is equally important. Here's how progressive trust laws in select states might help you achieve your estate-planning goals.**

So you've got the "who," "what" and "why" of your estate-planning strategy down pat. You've selected loved ones as beneficiaries, carefully chosen assets to transfer to the trust and made a plan to help reduce tax liability and avoid probate.

But if you haven't considered the "where," you might be missing out. That's because various states in which your trust could be located — otherwise known as situs (pronounced "sigh-tus") — maintain different trust laws affecting everything from taxation to term.

"There are some states that have made a real effort to modernize their trust laws in the hopes of attracting more business to their jurisdiction and creating a tie with wealthy individuals who might otherwise look elsewhere," says Mike Ott, Central Region President for The Private Client Reserve. He cites Alaska, Delaware, Nevada, South Dakota and Ohio as some of the nation's most trust-friendly states. "Situs opportunities should be of interest to individuals in those states as well as individuals in other states who might be interested in creating a trust or moving one."

Situs opportunities exist primarily for individuals and families with irrevocable trusts, which are created by grantors who agree to give up ownership and control of the trusts and the assets inside them. There are few opportunities for revocable trusts, which allow the grantor to change the document, revoke the trust and take back the assets into his or her own name, Ott says.

## Did You Know?

**In 1986, Delaware became the first state to repeal the rule against perpetuities. Instead, it enacted a 110-year limitation, which it abolished in 1995 so that trusts administered in Delaware could last indefinitely. Since then, efforts by Delaware to retain its trust business, and by other states to compete for it, have resulted in a growing list of trust statutes that benefit grantors and beneficiaries of irrevocable trusts.**

**In May, The Private Client Reserve opened a new Delaware trust office in Wilmington to provide personal trust services for clients.**

## 5 Estate-Planning Mistakes to Avoid

Administering your trust in the wrong state is just one common estate-planning mistake to avoid. Here are others:

**1 No estate plan:** "Some people don't have a will, or if they do, it's out of date. That's the quintessential estate-planning mistake," says Sally Mullen of The Private Client Reserve.

**2 Failure to transfer assets into a trust:** It's not enough to have a trust document; you have to title assets, such as investment accounts, real estate and insurance, to the trust.

**3 Outdated beneficiaries:** By failing to check your beneficiary designations, you might give your assets to people you no longer want as recipients, such as a divorced spouse. "Or you might want to give an asset to a particular person, but because of the beneficiary designation, it never makes its way there," says Joel Yudenfreund of The Private Client Reserve.

**4 Failure to coordinate estate and investment professionals:** Your investment professional should be fully aware of the purpose and goal of the estate plan, Yudenfreund says.

**5 Planning in a vacuum:** "To the extent you're comfortable doing so, share your estate plan with your loved ones so there aren't any surprises," Mullen says. "It's an opportunity to bring them under your wing and teach them to be stewards of wealth as you have been."

"Revocable trusts are typically pass-through from an income tax standpoint," he says. "Income and deductions show up on your 1040, so there's no real opportunity to save anything from a tax standpoint; it's still going to be taxed as if it were in your own name no matter where it's located."

While U.S. Bank doesn't provide tax or legal advice or draft legal documents, we can guide you through several scenarios in which considering trust situs might make good sense — and cents:

### GOAL: REDUCE YOUR TAX LIABILITY

Just like individuals, irrevocable trusts are considered taxpayers. "Every year, the trustee files a tax return for the trust, reporting income and taking deductions," says Sally Mullen, Chief Fiduciary Officer for The Private Client Reserve. "In many states, those trusts are subject to both federal and state income tax. But in trust-friendly states, there is no state fiduciary income tax. So you'll file a federal return for your trust but not a state return."

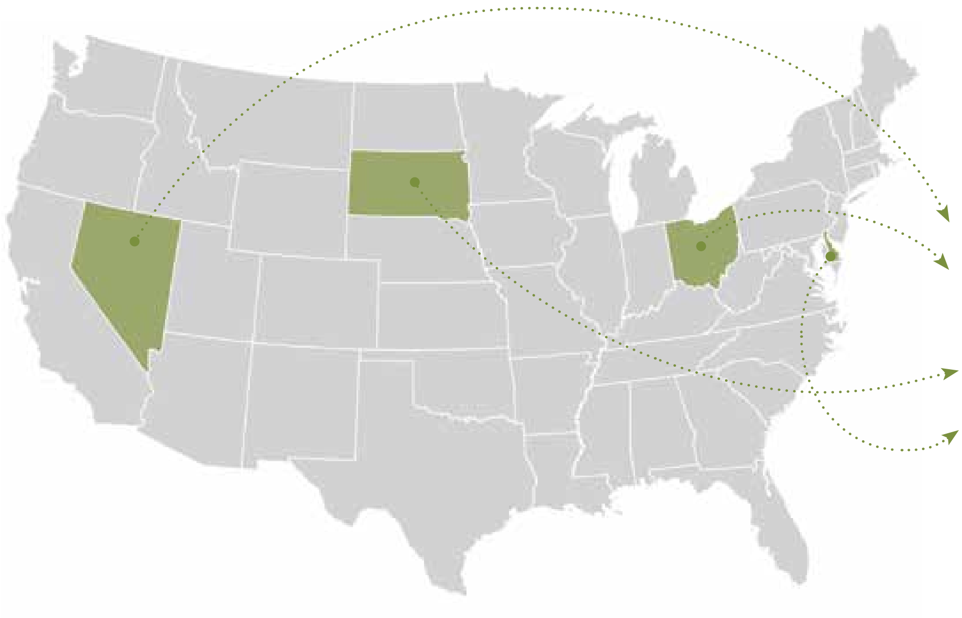
Trusts in Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming currently are exempt from state income tax. Trusts in several other states are likewise exempt, unless they have a resident grantor, trustee or beneficiary. In Delaware and Illinois, for instance, trusts are taxed only if there are resident beneficiaries.

In addition to income tax, situs can affect taxes on capital gains. "A classic situation in which situs might be helpful is when an irrevocable trust has a large concentration in one or two stocks," Mullen says. "If the trust were to divest itself of that block of stock, in most states there would be capital gains paid at the federal and state level. If you move the situs to a trust-friendly jurisdiction, you could save money by not having to pay capital gains taxes at the state level."

### GOAL: LEAVE A LEGACY FOR FUTURE GENERATIONS

Individuals who want to bequeath wealth to their grandchildren's grandchildren — and perhaps even the generation after that — can create a dynasty trust that goes on forever. "As long as assets stay in that dynasty trust, there should never be estate tax on those assets again," says Joel Yudenfreund, Wealth Management Strategist at The Private Client Reserve.

But true dynasty trusts are only possible in states that have abolished the rule against perpetuities, which generally provides that a trust cannot last more than "lives in being plus 21 years," or in states that allow you to opt out of the rule. "For example, let's say your grandfather sets up an irrevocable trust. He has living children and grandchildren and no great grandchildren. Under the rule against perpetuities, the trust has to terminate 21 years after all the children and grandchildren pass away," Yudenfreund says.



## How The Private Client Reserve Can Help

**The Private Client Reserve has advisors in four trust-friendly states. Here's how these states have abolished or modified the rule against perpetuities:**

**Nevada: allows dynasty trusts to live 365 years**

**Ohio: offers the ability to "opt out" of the rule against perpetuities**

**South Dakota: abolished the rule against perpetuities**

**Delaware: abolished the rule against perpetuities**

**For more information on trust-friendly jurisdictions, speak with your Wealth Management Advisor or visit reserve.usbank.com and click on "Offices."**

States that have abolished the rule against perpetuities include Alaska, Delaware, Ohio and South Dakota; others have liberally modified it. (Learn how the four trust-friendly states in which The Private Client Reserve maintains offices measure up in "How The Private Client Reserve Can Help," above.)

### GOAL: ESTATE-PLANNING PRIVACY

By nature, trusts offer more privacy than wills. While the latter are public documents filed with the courts, the former are not. In trust-friendly states, additional protections may exist in the event of trust proceedings and disputes. In Delaware, for instance, court records from trust cases typically are sealed for three years; in South Dakota, they're sealed permanently.

"If you have a trust where there are feuding beneficiaries who don't agree on some particular aspect of the trust administration — maybe it's investment management or maybe it's distribution arrangements for the family — there might be a court proceeding," Mullen says. "In states without sealed court records, all of that might go into the newspaper."

Delaware and South Dakota enable the creation of trusts that exempt trustees from the obligation of notifying beneficiaries of the trusts' existence. "In these states, a parent or grandparent might say, 'I want to get assets out of my estate. But if my children or grandchildren know about this trust, it might do away with their ambition to make a living,'" Yudenfreund says. "A trust created in Delaware or South Dakota could accomplish this goal."

### BEFORE YOU MAKE A MOVE…

If you're interested in creating a new trust, situs generally is not an issue; you can locate your trust wherever you like. But if you're interested in moving an existing one, numerous technicalities might get in your way.

Some states' laws permanently tie the trust to the state in which it was originally established, so moving the trust to a tax haven might not be enough to exempt it from state income tax.

Likewise, moving a trust could unintentionally disturb other benefits already in place, such as an exemption from generation-skipping tax, Mullen says. "When a trust isn't exempt, there could be an additional generation-skipping tax liability paid by either the trust or the beneficiary for certain types of distributions," she says. "Careful and thorough review of the impact of the change should be completed and documented prior to transfer to avoid losing the exemption."

Ultimately a trust's biggest hurdle, loss of control, is not related to situs. "Wherever the trust is located, you're taking assets you own and, in most cases, putting them in a vehicle to never directly control those assets again," Mullen says. "You have to be ready for that."

Your Wealth Management Advisor can work with your tax and legal advisors to help identify potential trust situs considerations and opportunities for your estate-planning strategy.

"The biggest hurdle clients face when creating trusts is they no longer have control of the transferred assets. Therefore, it is important that clients leave behind enough assets so they can comfortably support themselves after the transfer has been made," says Raymond Radigan, Managing Director of Trust for the East Region of The Private Client Reserve. "In fact, we regularly review the balance sheet of our clients and provide analysis that helps determine the appropriate amount of transfer." ■