



What You Need to Know about Filing a Trust Income Tax Return!

RUSSO LAW GROUP, P.C.

Estate Planning, Elder Law & Special Needs



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Q&A

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Vincent J. Russo
 J.D., LL.M., CELA, CAP

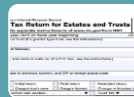


- Managing Shareholder of Russo Law Group, P.C., Long Island's Signature Elder Law, Special Needs and Estate Planning Law Firm with five offices on Long Island and New York City
- Master of Law in Taxation, Certified Elder Law Attorney, and Member of the Council of Advanced Practitioners
- Co-Founder of the Academy of Special Needs Planners
- Founding Member, Fellow and Fifth President of the National Academy of Elder Law Attorneys (NAELA)
- Co-Founder of the Theresa Alessandra Russo Foundation for Children with Special Needs
- Author of the seminal Treatise: *New York Elder Law and Special Needs Practice* for lawyers practicing in New York
- Recognized by *Super Lawyers* as one of the "Top 100 Lawyers in New York"

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We Will Cover...



Does the Trust Need to File a Tax Return?



Who Pays the Tax?



Examples of Trusts and the Tax Rules



How to Pay Less Taxes?

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Does the Trust Need to File a Tax Return?

Form **1041** Department of the Treasury - Internal Revenue Service
U.S. Income Tax Return for Estates and Trusts
 Information about Form 1041 and its separate instructions is at www.irs.gov/form1041.

A Check all that apply:
☐ Decedent's estate
☐ Simple trust
☐ Complex trust
☐ Qualified disability trust
☐ ESST (S portion only)
☐ Grantor type trust
☐ Bankruptcy estate-Ch. 7
☐ Bankruptcy estate-Ch. 11
☐ Fixed income fund

For calendar year 2010 or fiscal year beginning _____, 20____
 Name of estate or trust (if a grantor type trust, see the instructions.) _____
 Name and title of fiduciary _____
 Number, street, and room or suite no. (If a P.O. box, see the instructions.) _____
 City or town, state or province, country, and ZIP or foreign postal code _____

B Number of Schedules K-1 attached (see instructions) **F** Check ☐ Initial return ☐ Final return ☐ Amended return
☐ Change in trustee's name ☐ Change in fiduciary ☐ Change in fiduciary's

G Check here if the estate or filing trust made a section 643 election: ☐ Trust TIN ☐

1 Interest income

THE ANSWER IS: *MAYBE*

If a Revocable Trust

- Use the Grantor's Social Security Number as the Taxpayer Identification Number (TIN)
 - No trust return required
- If the Trust has a TIN, then you will have to file a trust income tax return as a "Grantor Trust" for income tax purposes
 - This would be an informational income tax return
 - No taxes will be due from the trust

If an Irrevocable Trust

- Then, it depends on the Provisions of the Trust
 - Can be drafted as a “Grantor Trust” for income tax purposes
 - In such case, use the grantor’s social security number as the Taxpayer Identification Number (TIN)
 - No trust return required
 - Can be drafted as a “Complex Trust”
 - Trust will have to file a tax return
 - The trust and/or the beneficiaries will have to report the income subject to income taxation (depending on who received the income)

Who Pays the Tax?



The Income Tax Rates

- Tax rates range from 10% to 37%
- For Individuals
 - Maximum rate: 37% at \$518,401 or greater for a single individual and \$622,051 for a married couple filing joint
- For Trusts
 - Maximum rate: 37% at 13,050 or greater

The Taxpayer

- Grantor Trust – the Grantor reports the income and pays the tax
- Non- Grantor Trust (Complex Trust)
 - The Trust files a tax return
 - General rule: the trust reports the income subject to income tax
 - Exception: distributions of trust income to or for the benefit of a beneficiary
 - Then, the beneficiary will have to report the income on their personal income tax return

Examples of Trusts and the Tax Rules



Tax Treatment of Different Types of Trusts

Grantor Trust – Grantor Reports the Income	Non-Grantor Trust – Trust/ Beneficiaries Report the Income
Revocable Living Trust*	Credit Shelter / Marital Trusts
Medicaid Asset Protection Trust* **	Trusts under a Will
Irrevocable Life Insurance Trust* **	

**Upon the demise of the Grantor- the Trust is a Non-Grantor Trust ** Typically*

Note: The above are general rules. Each Trust must be reviewed on a case-by-case basis in order to determine the proper tax treatment.

How to Pay Less Taxes?



Trust Structuring to Save Income Taxes

- For Irrevocable Trusts, there is an opportunity to have the trust drafted to make it:
 - A Grantor Trust which will be a benefit if the Grantor is in a lower income tax bracket than the trust rates
 - A Non-Grantor Trust which will benefit the Grantor and the Beneficiaries if either the Trust and/or the Beneficiaries are in a lower tax bracket
- Also, Trusts may be subject to income taxation at the State Level depending upon the situs of the Trust and/or Trustees
 - There may be an opportunity to create a trust in a State that does not have an income tax
 - Subject to “Source Income” Rules

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How to Pay Less Taxes?

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Any Questions?



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