



# 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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Attendees are  
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**Slides and recording** will  
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Tell us how we  
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Leave

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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  
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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 U.S. Income Tax Return for Estates and Trusts**  
 Department of the Treasury – Internal Revenue Service  
 ► Information about Form 1041 and its separate instructions is at [www.irs.gov/form1041](http://www.irs.gov/form1041).

<b>A</b> Check all that apply:	For calendar year 2016 or fiscal year beginning _____, 20____
<input type="checkbox"/> Decedent's estate	Name of estate or trust (If a grantor type trust, see the instructions.)
<input type="checkbox"/> Simple trust	Name and title of fiduciary
<input type="checkbox"/> Complex trust	Number, street, and room or suite no. (If a P.O. box, see the instructions.)
<input type="checkbox"/> Qualified disability trust	City or town, state or province, country, and ZIP® or foreign postal code
<input type="checkbox"/> ESRT (§ 678 only)	<b>B</b> Number of Schedules K-1 (If more than 100, attach Form 1041, Line 10, Part II.)
<input type="checkbox"/> Grantor type trust	<b>C</b> Check here if the estate or filing trust made a section 645 election.
<input type="checkbox"/> Bankruptcy estate (Ch. 7)	<b>D</b> Check here if the estate or filing trust made a section 645 election.
<input type="checkbox"/> Bankruptcy estate (Ch. 11)	<b>E</b> Check here if the estate or filing trust made a section 645 election.
<input type="checkbox"/> Pooled income fund	<b>F</b> Check here if the estate or filing trust made a section 645 election.
	<input type="checkbox"/> Initial return 2016 Initial return 2016 <input type="checkbox"/> Final return <input type="checkbox"/> Amended return <input type="checkbox"/> Change in trust's name <input type="checkbox"/> Change in fiduciary <input type="checkbox"/> Change in fiduciary's TIN <input type="checkbox"/> Trust TIN
	<b>G</b> 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

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- 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

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- 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



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## 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.

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# 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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a Tax Return?



Who Pays the Tax?



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How to Pay Less Taxes?

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Any Questions?



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**800-680-1717**

If you have a family member or friend that can use our help,  
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