

## Patti Spencer's Taxing Matters Column for June 30, 2008

### If you are a trustee, read this

Trustees of Pennsylvania trusts have until Nov. 6 to comply with the new notice requirements of the Pennsylvania Uniform Trust Act (PA UTA). This new legislation requires notice to beneficiaries and interested parties of the existence of trusts.

Until now, there have been many "secret" trusts in Pennsylvania. There are many trusts whose beneficiaries don't know that the trust exists. A trustee had no duty to tell beneficiaries about the existence of the trust they managed or to provide any information to beneficiaries about the trust, its investments or provisions.

Secret trusts were bad enough, but the situation was exacerbated because at the same time the Pennsylvania state law of trusts has always been "beneficiary enforced," meaning that there is no independent review of the trustee's actions by a court or any other entity. The only way a trustee can be criticized and brought to task is by an action brought by beneficiaries. If the beneficiaries don't know the trust exists, then they obviously can't review the trustee's actions to determine if legal action is necessary. Who is looking over the trustee's shoulder? Many times, no one. This had been a sorry state of affairs indeed.

The Act applies only to trusts that are funded and are not going to change. Assume a Settlor creates and funds a revocable trust. As long as the Settlor is alive and competent no notice is required. If Mom's will creates a trust for her children, the Act requires no notice until after she dies since she can revoke the will at any time while she is still alive.

But, under the new Act, trustees are required to give notice when certain events occur. The law applies not only to new trusts but also to trusts created any time in the past that are now still in existence. Following is a brief summary of the notice provisions. If you are a trustee, we urge you to get legal counsel as there are many twists and turns to the law which cannot be addressed in this short column.

There are five triggering events for sending notices to "current beneficiaries." A current beneficiary is a person 18 years of age or older to or for whom income or principal of a trust must be distributed currently, or a person 25 years of age or older to or for whom income or principal of a trust may, in the trustee's discretion, be distributed currently. Here are the events and the notice requirements:

**1. Death of a settlor (the person who created the trust).** If the settlor died before Nov. 6, 2006, and if the trust was revocable (including testamentary trusts), give notice

to current beneficiaries, the executor of settlor's estate, settlor's spouse and children (or to their guardians) by Nov. 6. If the trust was irrevocable, give notice to current beneficiaries by Nov. 6.

If the settlor died on or after Nov. 6, 2006, and if the trust was revocable (including testamentary trusts), give notice to current beneficiaries, the executor of settlor's estate, settlor's spouse and children (or to their guardians) within 30 days trustee learns of the settlor's death. If the trust was irrevocable, give notice to current beneficiaries within 30 days trustee learns of death.

**2. New current beneficiary.** A new beneficiary is entitled to notice. Examples would be a discretionary beneficiary who attains age 25, or a new beneficiary taking a deceased beneficiary's share.

**3. Change of trustee.** This applies only to irrevocable trusts and notice must be given to all current beneficiaries.

**4. Incapacity of settlor.** If the settlor was adjudicated incapacitated before Nov. 6, 2006, and the trust was revocable, then give notice to settlor's guardian by Nov. 6, 2008. If the trust was irrevocable, give notice to current beneficiaries by Nov. 6, 2008.

If the settlor was adjudicated incapacitated after Nov. 6, 2006, and the trust was revocable, then give notice to the settlor's guardian within 30 days after trustee learns of adjudication. If the trust was irrevocable, give notice to current beneficiaries within 30 days after Trustee learns of adjudication.

**5. Opt-in beneficiaries.** Give notice to any other beneficiary who has sent the trustee a written request for notice.

What is in the notice? Again, you should consult counsel to make sure the notice is crafted to reduce liability exposure.

The notice must include the fact of the trust's existence, the identity of the settlor, the trustee's name, address and telephone number, the recipient's right to receive upon request a copy of the trust instrument, and the recipients' right to receive upon request an annual written report of the trusts' assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report.

This is big. Not only does the beneficiary learn there is a trust, but the beneficiary is entitled to a complete report of its transactions. And then the fun begins!