

# **NING and DING Trusts in Estate Planning: Designing ING Trusts to Avoid State Income Tax and Protect Assets**

Effective Drafting of Incomplete Gift Non-Grantor Trusts, Jurisdictional Differences, IRS PLRs

TUESDAY, AUGUST 11, 2015

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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# 1st Annual Non-Grantor Trust State Income Tax Chart - Page 1 of 2

State (alphabetical)	Taxing Statute	Top 2015 Tax Rate	Under What Conditions does the State Tax a Non-Grantor Trust?
Alabama	<u>Ala. Code §§40-18-1(33)</u>	5.00%	If the trust is set up by the Will of an AL resident or settlor was an AL resident at time trust became irrevocable, and an AL resident is a beneficiary or trustee for more than seven months during the tax year
Alaska	***No tax***	0%	***No tax***
Arizona	<u>Ariz. Rev. Stat. §43-1301(5)</u>	4.54%	If there is at least one AZ trustee
Arkansas	<u>Ark. Code Ann. §§26-51-201(a)-(c)</u>	7.00%	If the trust is set up by the Will of an AR resident or settlor was an AR resident, and there is an AR trustee
California	<u>Cal. Rev. &amp; Tax. Code §17742</u>	13.30%	If the trust has either a CA trustee or a CA non-contingent beneficiary, tax apportioned based on CA vs. non-CA trustees and beneficiaries
Colorado	<u>Colo. Rev. Stat. §39-22-103(10)</u>	4.63%	If the trust is administered in CO
Connecticut	<u>Conn. Gen. Stat. §12-701(a)(4)(C)-(D), (a)(5), (a)(6)</u>	6.70%	If the trust is set up by the Will of a CT resident or settlor was a CT resident at time property transferred to an irrevocable trust or at the time property transferred to revocable trust that later became irrevocable --- other than for Will transfer, tax is modified fractionally to the extent there are nonresident non-contingent beneficiaries
Delaware	<u>30 Del. C. §1601(8)-(9); 30 Del. C. §1636</u>	6.60%	If the trust is set up by the Will of a DE resident, or settlor of trust was a DE resident, or the majority of the trustees are DE trust for more than ½ the year; in all of such cases only if there is a DE beneficiary
Florida	***No tax***	0%	***No tax***
Georgia	<u>O.C.G.A. §48-7-22</u>	6.00%	If there is trust property located in GA or if the trustee is “managing funds for the benefit of a resident of” GA
Hawaii	<u>Haw. Rev. Stat. §§235-1; Form N-40 Instr.</u>	11.00%	If there is a HI trustee or if the trust is administered in HI, but only if there’s a Hawaii beneficiary
Idaho	<u>Idaho Rev. and Tax. §63-3015(2)</u>	7.40%	If there are three or more of: (1) Grantor is ID resident; (2) Trust governed by ID law; (3) Trust has real or tangible personal property located in ID; (4) Trust has ID trustee; and/or (5) Administration of trust in ID
Illinois	<u>35 Ill. Comp. Stat. 5/1501(a)(20)(C)-(D)</u>	3.75%	If the trust is set up by the Will of an IL resident or settlor was an IL resident at time trust became irrevocable
Indiana	<u>Ind. Admin. Code tit.45, r. 3.1-1-12</u>	3.30%	If the trust is administered in IN
Iowa	<u>Iowa Admin. Code r. 701-89.3(1)-(2)</u>	8.98%	Depends on “relevant facts of each case” --- Relevant facts include residence of trustees, location of administration, location of evidence of intangible assets of the trust, etc. --- Must read rules carefully
Kansas	<u>Kan. Stat. Ann. §§79-32, 109(d)</u>	4.60%	If the trust is administered in KS
Kentucky	<u>Ky. Rev. Stat. Ann. §386B.1-060; Instr. to Form 741</u>	6.00%	If the principal place of administration of the trust is in KY
Louisiana	<u>La. Rev. Stat. Ann. §47:300.10(3)</u>	6.00%	If the trust is set up by the Will of a LA resident; or an inter vivos trust set up by resident of any jurisdiction if trust instrument provides that the trust shall be governed by LA law, or if silent then taxed if administered in LA
Maine	<u>Me. Rev. Stat. Ann. Tit. 36, §5102(4)(B)-(C)</u>	7.95%	If the trust is set up by the Will of a ME resident or settlor was a ME resident
Maryland	<u>Md. Code Ann., Tax-Gen. §§10-101(k)(1)(iii)</u>	5.75%	If the trust is set up by the Will of a MD resident or settlor “is a current resident of” MD or the trust is principally administered in MD --- Also note the 1.25% to 3.20% county tax
Massachusetts	<u>Mass Regs. Code tit. 830, §62.10(c); Form 2 Instr.</u>	5.15%	If the trust is set up by the Will of a MA resident and there is MA beneficiary; Or if settlor was a MA resident at time of creation of inter vivos trust or at any time during year in which income is computed or who died as MA resident and there is MA beneficiary, but only if MA trustee --- Also note the 12.00% tax for short-term capital gains and gains for sales of collectibles
Michigan	<u>Mich. Comp. Laws §206.18(1)(c); Form MI-1041</u>	4.25%	If the trust is set up by the Will of a MI resident; or settlor was a MI resident at time trust became irrevocable, unless no MI trustee, no MI assets and no MI beneficiary
Minnesota	<u>Minn. Stat. §290.01, Subd. 7b</u>	9.85%	If the trust is set up by the Will of a MN resident that died post-12/31/1995 or trust that became irrevocable post-12/31/1995; or for pre-1/1/1996 irrevocable trusts if the majority of discretionary investment distribution decisions are made in MN or the books or records located in MN
Mississippi	<u>Miss. Code Ann. §27-7-5(1); Miss. Form 81-110 Instructions</u>	5.00%	If the trust is administered in MS
Missouri	<u>RSMo §143.331(2)-(3)</u>	6.00%	If the trust is set up by the Will of a MO resident or settlor was a MO resident at time trust became irrevocable, and a MO resident is a beneficiary on the last day of the tax year
Montana	<u>MT Code §72-38-103(14); 2014 MT Form FID-3 at 15</u>	6.90%	If principal place of administration is in MT --- Principal place of administration is the usual place where day-to-day activities carried on by the trustee which is generally trustee’s residence or usual place of business

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**Steve Oshins** is a member of the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. He is rated AV by the *Martindale-Hubbell Law Directory* and is listed in *The Best Lawyers in America®*. He was inducted into the NAEP Estate Planning Hall of Fame® in 2011 and has been named one of the 24 “Elite Estate Planning Attorneys” by *The Trust Advisor* and one of the Top 100 Attorneys in *Worth*. He can be reached at 702-341-6000, ext. 2 or [soshins@oshins.com](mailto:soshins@oshins.com). His law firm’s website is [www.oshins.com](http://www.oshins.com).

# 1st Annual Non-Grantor Trust State Income Tax Chart - Page 2 of 2

State (alphabetical)	Taxing Statute	Top 2015 Tax Rate	Under What Conditions does the State Tax a Non-Grantor Trust?
Nebraska	<u>§77-2714.01(6)(b)-(c)</u>	6.84%	If the trust is set up by the Will of a NE resident; or if settlor of inter vivos trust was a NE resident at time such person may no longer exercise the power to revest title to the trust property in himself or herself
Nevada	***No tax***	0%	***No tax***
New Hampshire	***No tax***	0%	***No tax***
New Jersey	<u>NJSA §54A:1-2(o)-(p); Form NJ-1041</u>	8.97%	If the trust is set up by Will of NJ resident, or if settlor of a trust was a NJ resident at time of transfer to irrev. trust or at time a rev. trust became irrevocable, but not if no NJ assets, no NJ source income and no NJ resident trustee
New Mexico	<u>NM Stat. Ann. §87-2-2(I), (S); NM Tax. &amp; Rev. Dept.</u>	4.90%	If the trustee is a NM resident; or if the principal place from which the trust is managed or administered is in NM
New York	<u>N.Y. Tax Law §605(b)(3)-(4)</u>	8.82%	If the trust is set up by the Will of a NY resident or settlor was a NY resident at time trust became irrevocable or when transfer made to trust, but foregoing doesn't apply if no NY trustees, all corpus outside of NY and all income non-NY sourced; Also, no Incomplete Gift Non-grantor Trusts
New York City	<u>N.Y. Tax Law §1305</u>	3.876%	If the trust is set up by the Will of a NY City resident; or if settlor was a NY City resident at time trust became irrevocable or when transfer made to trust; also, no Incomplete Gift Non-grantor Trusts
North Carolina	<u>N.C. Gen. Stat. §105-160.2</u>	5.75%	If there is a NC beneficiary
North Dakota	<u>N.D. Admin. Code §81-03-02.1-04(2)</u>	3.22%	If the trust "has a relationship to the state sufficient to create nexus" --- This includes, but is not limited to: (1) If there is a ND beneficiary; (2) If there is a ND trustee; (3) If there are ND situs assets; (4) If there is administration in ND; and/or (5) If the "laws of this state are made applicable to the trust"
Ohio	<u>Ohio Rev. Code Ann. §5747.01(D)(3)</u>	5.33%	If the trust is set up by the Will of OH resident; or if settlor of an inter vivos trust was an OH resident at time trust became irrevocable and at least one of the trust's "qualifying beneficiaries" is an OH resident during all or some portion of taxable year
Oklahoma	<u>Okla. Stat. tit. 68, §2353.6</u>	5.25%	If the trust is set up by the Will of an OK resident; or settlor of inter vivos trust was an OK resident at time such trust irrevocable; or when person may no longer exercise the power to revest title to the trust property in himself
Oregon	<u>Or. Rev. Stat. Ann. §316.282(1)(d)</u>	9.90%	If there is an OR trustee; or if the trust is administered in OR
Pennsylvania	<u>72 P.S., tit. 61, Sec. 101.1</u>	3.07%	If the trust is set up by the Will of a PA resident; or if settlor of inter vivos trust was a PA resident at time of creation of trust or at time of transfer to trust
Rhode Island	<u>R.I. Gen. Laws §844-30-5(c)(2)-(5)</u>	5.99%	If the trust is set up by the Will of a RI resident; or a RI settlor of a revocable trust upon becoming irrevocable; or a settlor of an irrevocable trust if the settlor was a RI resident at time of creation of trust or at time of transfer to trust, but in each of these situations only to the extent that the beneficiaries are RI residents
South Carolina	<u>S.C. Code Ann. §12-6-30(5)</u>	7.00%	If the trust is administered in SC
South Dakota	***No tax***	0%	***No tax***
Tennessee	<u>Tenn. Code Ann. §67-2-110(a)</u>	6.00% (int./div. only)	If there is a TN beneficiary
Texas	***No tax***	0%	***No tax***
Utah	<u>Utah Code Ann. §75-7-103(1)(i)(ii)-(iii)</u>	5.00%	If the trust is set up by the Will of a UT resident; or if a trust is administered in UT
Vermont	<u>32 V.S.A. §5811(1)(B)</u>	8.95%	If the trust is set up by the Will of a VT resident; or if settlor of a trust was a VT resident at time of transfer to irrevocable trust or was a VT resident at the time a revocable trust became irrevocable
Virginia	<u>Va. Code Ann. §58.1-302</u>	5.75%	If the trust is set up by the Will of a VA resident; or if a trust was created by a settlor who was a VA resident; or a trust which is being administered in VA
Washington	***No tax***	0%	***No tax***
Washington, D.C.	<u>D.C. Code §47-1809.01; 1809.2</u>	8.95%	If the trust is set up by the Will of a D.C. resident; or if a trust was created by a settlor who was a D.C. resident
West Virginia	<u>W. Va. Code §11-21-7(c)</u>	6.50%	If the trust is set up by the Will of a WV resident; or if a trust was created by a settlor who was a WV resident
Wisconsin	<u>Wis. Stat. §71.14(2), (3), (3m)</u>	7.65%	If the trust is set up by the Will of a WI resident; or if settlor of a post-10/28/1999 inter vivos trust was a WI resident at time trust became irrevocable; or if irrevocable inter vivos trust administered in WI pre-10/29/1999
Wyoming	***No tax***	0%	***No tax***

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