INDEPENDENT

THINKING

A NEW FIDUCIARY PERSPECTIVE

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Seventh Edition

RETHINKING TRUST SITUS SELECTION

Situs matters, but less than most advisors are led to believe.

Jurisdictional competition for trust business is real, and so is the marketing around it. Differences in tax treatment, asset protection, and administrative flexibility exist, but they are often overstated. The better question is not which state is "best," but which jurisdiction aligns with the trust's objectives, structure, and trustee capabilities to exercise informed fiduciary judgment over the life of the trust.

Income Tax: Often Overweighted

State income tax is rarely the deciding factor for modern trusts.

For most trusts with diversified portfolios, multiple beneficiaries, layered structures – state income tax exposure can be managed through distribution planning, trustee selection, and thoughtful design. Zero-tax jurisdictions may be helpful in certain cases, but comparable outcomes are often achievable elsewhere with the right structure.

Asset Protection: Predictability over Extremes

The most aggressive statute is not always the most reliable solution.

Domestic asset protection trust, or DAPT, regimes vary in meaningful ways. Differences in seasoning periods, exception creditors, and interaction with federal law all matter, but for most client situations, framework reliability and predictability matter more than pushing statutory boundaries. Clients want durable protection, not a stress test.

Beneficiary-level protection – spendthrift enforcement, statutes of limitations, judicial deference to trustee discretion – is where leading jurisdictions increasingly converge. Outcomes here are driven less by situs selection and more by drafting quality and administrative discipline.

Flexibility: Now Table Stakes

Most leading jurisdictions offer comparable structural flexibility.

Decantings, non-judicial settlement agreements, and modern administrative provisions are now widely available across multiple well-developed trust states. Perceived differentiators are often more about marketing than material capability. The key is verifying how these tools function in practice.

The Legal and Fiduciary Environment: The Deciding Factor

The quality of the fiduciary ecosystem; ability to administer the structure efficiently; make timely decisions; and work collaboratively with advisors as family circumstances evolve, is often what determines outcomes.

Local bar sophistication, depth of case law, and court expertise matter enormously, especially for large, long-duration, or complex trusts. Jurisdictions with deep fiduciary expertise, developed case law, and specialized trust courts reduce uncertainty, support sound fiduciary decision-making and resolve disputes efficiently. This factor is harder to market than a tax rate but has far more value over time.

Bottom Line

Most of what the marquee trust jurisdictions offer can be replicated in other established trust states with the right design and the right trustee. In more complex situations, specialized jurisdictions can add value, but they should complement, not drive, the planning strategy.

The right question is not which state ranks highest on a list. It is which jurisdiction aligns with this trust's specific objectives and this trustee's demonstrated capabilities. A skilled trustee in a familiar legal environment — one capable of navigating evolving family dynamics, administering complex assets, and working proactively with beneficiaries and advisors— supported by experienced counsel and a predictable court system, will outperform marginal statutory advantages almost every time.


The deciding factor is the fiduciary environment

A Case in Point: Planning in Practice

A California individual held a highly concentrated position in a publicly traded company. The client wanted to diversify a portion of the position over time but was concerned that future gains realized inside a California trust structure could be exposed to California state income tax.

To address both transfer tax and income tax planning objectives, the client's estate planning attorney recommended establishing a non-grantor spousal lifetime access trust (SLAT) outside California. The attorney's initial recommendation was Nevada — a jurisdiction he frequently used due to its proximity to California, familiarity with its trust laws, no state income tax, relatively short statute of limitations for fraudulent transfer claims, and lack of statutory exception creditors under its domestic asset protection trust framework. Before implementation, Evercore Trust Company, a national trust bank and independent fiduciary advisor, and in this case a prospective trustee, was asked to evaluate the proposed structure alongside the family's attorney and tax advisors.

At first glance, Nevada appeared to offer compelling advantages. The trust would be designed as a non-grantor trust, allowing future income and gains realized within the trust to potentially avoid California income taxation. Nevada's asset protection statutes were often viewed as among the most favorable in the country, however, our analysis, as briefly outlined below, extended beyond the headline statutory benefits.

The trust was ultimately established in Delaware.

We expect the trust to diversify a significant portion of the concentrated stock position, reinvest proceeds across a broader portfolio, and continue to adapt to evolving family circumstances without administrative disruption.

For the family and its advisors, the exercise reinforced an important lesson: when multiple jurisdictions can achieve the core tax objectives, the deciding factor is often not the statute with the most attractive headline features, but the fiduciary environment that will support the trust for decades to come. It also illustrated the value to our clients of gaining our perspective early in the planning process. Timely collaboration allows the fiduciary, administrative and governance considerations to inform the structure before it is implemented.

SEVERAL FACTORS EMERGED:

- The primary planning objective was facilitating long-term diversification of the concentrated position while minimizing state income tax exposure—not maximizing creditor protection.
- The client had no meaningful existing creditor concerns that made Nevada's shorter fraudulent transfer limitations period a significant factor.
- Delaware's trust income tax regime was not expected to create a material disadvantage because accumulated income attributable to nonresident beneficiaries would generally not be subject to Delaware income tax.
- The trust was expected to continue for multiple generations, eventually benefiting children, grandchildren, and future descendants.
- Given the size of the trust and anticipated complexity of future administration, the likelihood of significant fiduciary decisions, beneficiary requests, and potential trust modifications over time was substantial.

After evaluating the competing considerations, the advisory team concluded that Delaware's mature fiduciary environment offered meaningful advantages. The state's extensive trust jurisprudence, specialized Court of Chancery, sophisticated trust bar, and long history of administering complex family trusts provided a level of predictability that was likely to become increasingly valuable over the life of the structure.

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