

WHY CHOOSE WYOMING?



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Christopher M Reimer and Amy M Staehr discuss Wyoming's trust-friendly laws

ESCALATING TAX AND reporting pressures on US and non-US trusts alike are forcing wealth planners to take a closer look at US jurisdictions with an eye to advising their clients to settle trusts in a particular state or consider domesticating non-US trusts. Under such scrutiny, trust laws in some states are holding up well, proving that the best 'offshore' jurisdictions may be onshore.¹ For decades, locales such as the Cook Islands, Nevis and the Channel Islands captured the interest and the assets of high-net-worth clients by drafting statutory trust provisions that enhanced asset protection, allowed self-settled trusts, repealed the rule against perpetuities and implemented additional useful rules – none of which went unnoticed by US jurisdictions. As a result, a handful of US states have adopted similarly flexible and protective laws.²

Julie Gilbert, Vice Chair of STEP Wyoming and President of Jackson Hole Trust Company, notes the explosion of interest in Wyoming in the past few years: 'The increase in taxes imposed by various US states – California, for example – as well as the *Foreign Account Tax Compliance Act*³ burdens on foreign trusts with US beneficiaries, have caused clients to ask their advisors difficult

questions about what to do. And this has forced those advisors to start looking to places like Wyoming – no state tax, trust-friendly laws and jaw-dropping scenery are hard to beat.'

Tax regime

Wyoming imposes no state income tax. This tax-free zone encompasses trust income, capital gains, individual as well as corporate income, gifts, out-of-state retirement income, mineral ownership and intangibles. The state's laws governing trusts are equally friendly: Wyoming authorises self-settled asset-protection trusts, 1,000-year dynasty trusts, directed trusts, purpose trusts, trust protectors and unregulated private trust companies.⁴

New legislation has enhanced the flexibility of Wyoming's law and highlights the state legislature's responsive pro-business and pro-wealth posture. Taking effect in July 2013, Wyoming trust law revisions include:

- statutory decanting;
- streamlined 'qualified beneficiary' rules with respect to consent and notice;
- confirmation that no separate perpetuities law limits the duration of non-charitable purpose trusts;

1 For the purposes of this article, 'onshore trusts' are created under or governed by the law of a US jurisdiction, and 'offshore' or 'foreign' trusts are created under or governed by the law of a non-US jurisdiction

2 For example, Alaska Stat s13.36.375 (2013); Delaware Code Ann tit 12, s3313 (2013); and Wyoming Stat Ann s4-10-510 (as amended by the 2013 Wyoming Laws Ch 178 (HB 139))

3 *Foreign Account Tax Compliance Act*, IRC s1471(d)(5) (2011) (enacted as part of the *Hiring Incentives to Restore Employment* (HIRE) Act, Pub L No 111-147, 124 Stat 71, s501 (2010))

4 Wyoming Stat Ann s4-10-101 *et seq*, s34-1-139, s13-5-101 to -104; Christopher M Reimer, 'The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction', 11 *Wyoming Law Review* 165, 176 (2011)

- additional powers a settlor can retain without threatening the irrevocable status of a self-settled asset-protection trust, known as a qualified spendthrift trust (QST), including allowing reimbursement of income taxes attributable to the trust;
- narrower exceptions to transfers into QSTs;
- clear and convincing standard of judicial review applicable to whether a transfer to a QST violates the *Uniform Fraudulent Transfer Act*;
- a new form of self-settled asset protection trust that provides creditor protection with no creditor exceptions so long as a regulated financial institution serves as trustee; and
- a new procedure to force a 'will contest' before death.⁵

Fiscal health

As important as it is to fully vet the trust and tax climate of a particular jurisdiction, that jurisdiction's fiscal health and stability are equally vital. While a locale may have favourable laws and a tax-free environment today, the continuing economic crisis has taught prudent planners that a jurisdiction's future must be evaluated alongside its present. Wyoming is considered 'America's Wealth Friendliest State', the state 'Most Favorable for Businesses', the 'Best-Run State in the Nation' and the 'Tax-Friendliest State'.⁶ It has a well-deserved reputation among the business-savvy; it is consistently rated in the top tier of fiscally sound state governments and boasts Standard & Poor's AAA rating, the highest credit rating possible.⁷ In addition, Teton County, home to the Yellowstone and Grand Teton national parks, contains a high concentration of the wealthiest US residents, according to the US Internal Revenue Service's annual compilation of average income per county.

Wyoming's rainy-day fund represents 47.6 per cent of the state's 2012 spending,⁸ and its mineral trust fund weighs in at over USD5 billion.⁹ Alaska is perhaps the only other trust-friendly state that is as fiscally healthy as Wyoming. Both states owe the prowess of their bank accounts to natural resources. Through responsible saving, Wyoming has gathered enough to ride out future downturns. In addition, while any tax law is subject to change, the future imposition of a Wyoming income tax is unlikely, due to the state's mineral wealth and the requirement of the Wyoming Constitution that any income tax liability be offset by sales, use and property taxes – enough of a safeguard that its tax-free status is likely to last for many years.¹⁰ ■



WYOMING, UNITED STATES
CAPITAL: CHEYENNE
POPULATION: 576,000
AREA: 253,000 KM²



STEP Wyoming



STEP Wyoming was formed to assist practitioners locally, as well as in response to the international interest in Wyoming as a trust *situs* jurisdiction. It became an official branch on 25 January 2012. According to Julie Gilbert, Vice Chair of STEP Wyoming, the branch is made up of members interested in the state's position as a favourable US trust *situs*, 'with an understanding that Wyoming has a global role to play'. In 2012, STEP members from around the world attended the chapter's first annual conference, held at the Jackson Lake Lodge – retreat-of-choice for Ben Bernanke and the US Federal Reserve. At the conference Gilbert noted that Wyoming's most discussed role on an international level is in providing a solution to the *Foreign Account Tax Compliance Act* (FATCA) regulations that have made the administration of certain non-US trusts burdensome. This is a discussion that will continue at the 2013 conference, to be held in September at Jackson Hole, Wyoming.

FATCA

As most wealth planners are aware, under FATCA, a non-US trust may be considered a 'foreign financial institution', with the result that certain contributions to it may be subject to federal withholding tax.¹¹ Additionally, US beneficiaries of non-US trusts, the definition of which has been expanded, now have increased reporting requirements, as do US persons considered owners of non-US trusts under the grantor trust rules.¹² These taxes and requirements can be avoided if the non-US trust is brought onshore. Wyoming is unique in that it is the only US state that has modified the *Uniform Trust Code* to provide that the law of the jurisdiction designated in the terms of a newly migrated trust may be changed to the principal place of administration (i.e. Wyoming, after a Wyoming trustee is appointed).¹³ This statute is particularly useful when an established trust would benefit from Wyoming law on domestication, but the underlying trust lacks a provision that would otherwise allow a change in governing law.

All in all, Wyoming should be on the radar of any practitioner with cross-border clients interested in a low-tax, progressive trust *situs* jurisdiction with the ability to maintain its position well into the future.

⁵ HRB 139, 62nd Leg, 2013 Gen Sess (Wyoming 2013); HRB 151, 62nd Leg, 2013 Gen Sess (Wyoming 2013); HRB 201, 62nd Leg, 2013 Gen Sess (Wyoming 2013) (all effective 1 July 2013)

⁶ *Bloomberg Wealth Manager*, New York, 25 May 2011; The Tax Foundation, www.taxfoundation.org; 'Report: Wyoming Has Business-Friendly Taxes,' AP, 26 January 2012; Praxis Strategy Group, *Enterprising States: Policies that Produce*, 13 June 2012, www.uschamber.com/sites/default/files/reports/Enterprising-States-2012-web.pdf; Mark Wilcox, 'Wyoming No 4 Most Friendly State to Entrepreneurs,' *Wyoming Business Report*, 20 December 2012, www.wyomingbusinessreport.com/article.asp?id=64337; Douglas A McIntyre, 'Best and Worst Run States in America,' 24/7 Wall Street, 28 November 2011, 247wallst.com/2011/11/28/best-and-worst-run-states-in-america-an-analysis-of-all-50; *USA Today*, 'Wyo named most tax-friendly state; NY worst', www.usatoday.com/story/money/personalfinance/2013/03/30/tax-friendly-states-personal-corporate-income-taxes/2035723

⁷ Associated Press, 4 February 2013, k2radio.com/wyoming-maintains-aaa-credit-rating

⁸ *The Fiscal Survey of States, Fall 2012, A Report by the National Governors' Association and the National Association of State Budget Officers*, Table 26, www.nasbo.org/sites/default/files/Fall%202012%20Fiscal%20Survey.pdf

⁹ Value at the end of 2011 according to www.wyotax.org/PMTF.aspx

¹⁰ Wyo Const art 15, s18

¹¹ See IRC s1471(d)(5) (2013) (enacted as part of the HIRE Act s501, 124 Stat 71)

¹² IRC s6038D (2013) (enacted as part of HIRE Act s511, 124 Stat at 71)

¹³ Wyo Stat Ann s4-10-107(b)