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DID YOU KNOW.....“IN-TRUST ACCOUNTS”

By William J. Fowlis

SEPTEMBER 25, 2003

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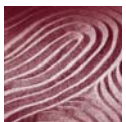
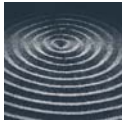
DID YOU KNOW . . . “IN-TRUST ACCOUNTS”



Date: September 25, 2003

Presented by: William Fowlis
of Miller Thomson LLP

to Society of Trust and Estate Practitioners



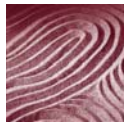
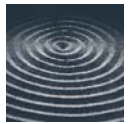
“In-Trust” Accounts

- Common Meaning of an “In-Trust” Account
 - Informal
- Objectives Sought
 - Income Splitting
 - Control over funds
 - Minimum of costs, complexity



Are “In-Trust” Accounts Really Trusts?

- Possible Legal Characterization
 - Outright gift of property to the child
 - Revocable transfer of property
 - Undocumented Trust



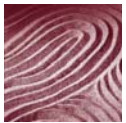
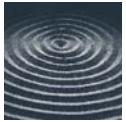
Practical Issues Regarding the Use of “In-Trust” Accounts

- Who Should Report the Income / Capital Gains
 - Child
 - Parent
 - Trust
- Consequences of a Trust
- Is the “In-Trust” Account a Bare Trust?
- Revocable Trust – A concern



Did You Know . . . CCRA Technical Interpretation 2002- 017676 dated July 21, 2003

- CCRA's Purpose in Issuing the Technical Interpretation
- Requirements for a Trust
 - Certainty of Intention

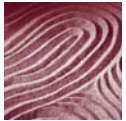
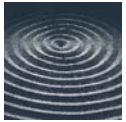


CCRA Technical Interpretation cont'd

Some Conclusions and Quotes

➤ Some Conclusions

- Determination has to be made on a case by case basis
- If not a Trust, perhaps Agency

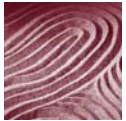
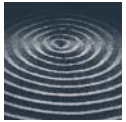


CCRA Technical Interpretation cont'd

Some Conclusions and Quotes

➤ Some Quotes

- The informal context in which In Trust accounts are created puts them in that grey zone where all facts have to be considered in order to determine their legal nature and where no sacramental formula will dictate the nature of the relationship that was created.
- Trust, gift, agency are some of the possibilities. If the relationship is not a trust, it might be difficult to characterize what is the nature of the arrangement but trusts are not a residual class of relationships.



CCRA Technical Interpretation cont'd

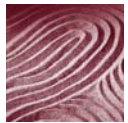
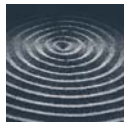
Some Conclusions and Quotes

- The CCRA's role is to administer the Income Tax Act and to make sure its provisions are properly applied to the legal relationships established by taxpayers. Whether a trust exists at law is a factual and legal issue. An indication in an investment account form will not create a trust unless the three certainties are met and can be proven. In light of the variety of circumstances and types of forms that may exist, the CCRA is in no better position than the courts in making that determination and cannot make a general statement with respect to the nature of In Trust Accounts.



CCRA Technical Interpretation cont'd

Some Conclusions and Quotes



- Informality ↓ Uncertainty of Legal Relationship ↓ Uncertainty of Tax Result
- Caution Recommended