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Act 182 enhances allure of trusts

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A new state law allows for the establishment of a type of trust that lawmakers hope will boost Hawaii's financial sector by attracting millions of dollars for its asset management business.

Backers of Senate Bill 2842, now Act 182, said the intent of the measure is to offer incentives to high-net-worth individuals throughout the United States and globally to transfer at least part of their liquid net worth into Hawaii for asset and trust management.

The law, which took effect July 1, specifically allows for the establishment of a type of irrevocable trust in Hawaii called a domestic asset protection trust, which allows those creating the trusts to put up to 25 percent of their net worth into the trust and the money is protected from future creditors.

What's more appealing is that the person putting money into the trust can benefit from it during his or her life, unlike traditional trusts, which are designed to benefit children and extended family upon his or her death.

So, it gives the person a financial nest egg to fall back on if, for example, they get sued.

The law also creates an exception to current Hawaii law stating that a trust must end within 90 years, or 21 years after the death of the last living relative

SEE ACT 182, PAGE 36

ACT 182: Wealth management business should benefit

FROM PAGE ONE

who was alive at the time the trust was first drafted, whichever is longer. This means the trust can last forever. And, if creating and administering the trust is done right and according to regulation, each beneficiary of the trust can benefit from the appreciated assets and avoid estate- or generation-skipping taxes for generations, local attorneys say.

The most notable example of a trust being forced to dissolve because of the rule against perpetuities is the Estate of James Campbell, which in 2007 distributed its assets to some 31 beneficiaries, the bulk of whom became shareholders in the newly formed James Campbell Co., one of Hawaii's largest private real estate companies with a portfolio valued at $2.6 billion at the time.

Supporters of the law say the wealthy will establish trusts in states that offer the best trust laws, just as businesses favor incorporating in Delaware to take advantage of its business-friendly laws.

Hawaii has long held an allure with the wealthy — many of whom are mainstays at luxury resorts or who own homes in the more affluent enclaves across the state — so Act 182 also represents a potential new business boon for local trust and estate planning attorneys, financial planners, wealth management advisers and banks.


Baker

"The state has an opportunity to get some income from this, but even more importantly, the jobs that will be created, the salaries and the taxes that get paid, it's similar to that kind of opportunity that we saw when we enabled captive insurance companies to domicile here," said Sen. Roz Baker, D-Kapalua-Makena, and chairwoman of the Senate Commerce and Consumer Protection Committee. "There's safeguards in there. You can't use them as dodges, and the language was well crafted... It's another service, another product that can be offered that has potential because we're looking for different ways to grow different sectors in our economy."

Furthermore, every domestic asset protection trust created in Hawaii will be assessed a one-time tax equivalent to 1 percent of the total assets transferred into the trust so that is an added revenue stream for the state.

Hawaii now joins other states, including Alaska, Delaware and Nevada, that have enacted similar laws for these types of trusts.

"Primarily, one of the reasons for passing the legislation is to try to bring more business into the state," said Mary Jane Connell, a partner with the Honolulu law firm of Carlsmith Ball, who specializes in trusts and estate law. "It did bring a lot of business to Alaska, and it can encourage people to bring business into Hawaii and invest their money here."

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Highlights of Act 182: The Permitted Transfers in Trust Act

- Permits a transferor to establish a trust that lasts forever. As such, the federal estate and generation-skipping transfer taxes may be deferred indefinitely. Even if the transferor remains a trust beneficiary, the trust assets are substantially protected from the claims of the transferor's creditors.
- Must be irrevocable and have an independent trustee who is a Hawaii resident, or a Hawaii bank or trust company that possesses and exercises trust powers and has its principal place of business in Hawaii.
- Only cash, marketable securities, life insurance contracts and nonprivate annuities are permissible investments within the trust.
- Must not provide for mandatory distributions of income or principal (i.e., such distributions are allowed, but only at the discretion of the trustee).
- Must specifically state that the trust is governed by Hawaii law.

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