

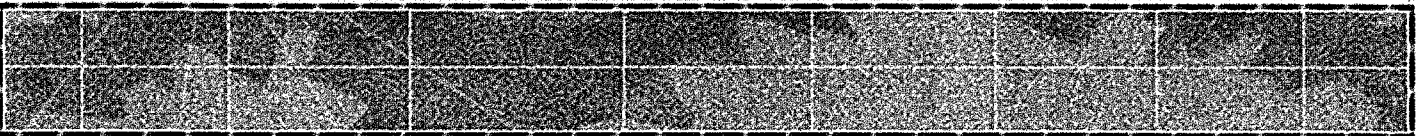
2021 Wyoming Trust Law Amendments & Possible Tax Law Changes



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Purposes of Wyoming Amendments

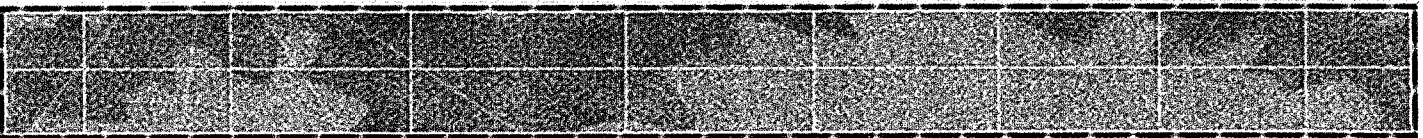
- ✧ Other states are constantly updating their trust laws
- ✧ Wyoming needs to remain competitive
- ✧ Our 2021 proposals are to address weaknesses in Wyoming's comparative ratings as a trust venue
- ✧ Keeping Wyoming in the first tier of states
 - ◆ Brings more trusts to Wyoming from other states
 - ◆ Increases assets held in Wyoming trusts
 - ◆ Maintains or increases trust officer, trust company, CPA, and attorney employment

Fraudulent Transfers Act W.S.

34-14-210



- ✦ Wyoming has 4 year look-back for most fraudulent transfer actions
- ✦ A main reason for Wyoming's lower ranking
- ✦ Competitors have 2 year look-back, and
- ✦ Shorter periods for asset protection trusts if notifications are provided
- ✦ Proposed amendments shorten look-back
 - ◆ Based on South Dakota, Nevada & Utah changes



Fraudulent Transfers Act W.S. 24-14-210 Amendments

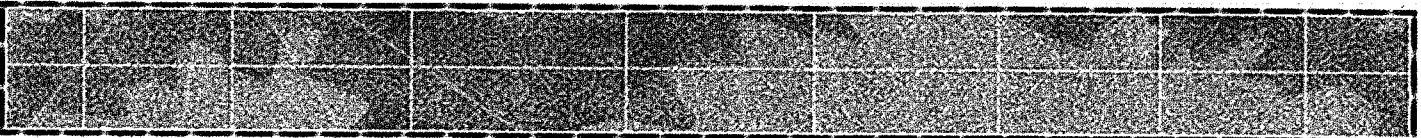
✱ Intent to defraud transfers 205(a)(i): Reduced from 4 years to later of two years after transfer or six months after could reasonably have been discovered

✱ Transfer without equivalent value & insolvent when transferred or made insolvent by transfer 205(a)(ii)

- ◆ Creditor had claim before transfer
- ◆ Reduced from 4 years to two years after transfer or obligation incurred

✱ Insider transfer for antecedent debt and insolvent 206(b)

- ◆ Creditor had claim before transfer
- ◆ Reduced from one year to six months



New Notice Provisions for Asset Protection Trusts

- ✧ Notices similar to creditor notices for probate and UTC administration of a trust
- ✧ Transfers to qualified spendthrift or discretionary trust
 - ◆ If known creditor is provided actual notice – 90 days after notice is mailed to creditor
 - ◆ Unknown creditor 90 days after publication notice
- ✧ Mailed and publication notice must provide
 - ◆ Name and address of settlor and trustee
 - ◆ Assets were transferred to asset protection trust
 - ◆ Creditor must initiate action within 90 days from notice
- ✧ If creditor had asserted specific claim before transfer – two years or 6 months after transfer is discovered



Adding UTC 507.1(a)

- ✦ To limit enforcement of foreign judgments against Wyoming asset protection trusts
 - ◆ To avoid routine enforcement of foreign creditor claim judgments against Wyoming trusts
- ✦ To enforce a foreign creditor judgment:
 - ◆ Judgment must be enforceable creditor claim under Wyoming UTC for asset protection trust
 - ◆ Judgment may be consistent with trust terms if terms are more lenient than Wyoming UTC



Adding UTC 507.1(b)

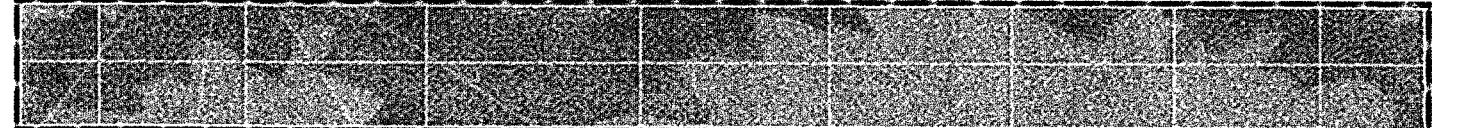
- ✦ Liability protection for trustee, trust protector, trust advisor of Wyoming asset protection trust
- ✦ If refuses to comply with foreign judgment when has good faith belief
 - ◆ Judgment is inconsistent with UTC, or
 - ◆ Limitations of terms of trust
- ✦ Similar to UTC 517-518 protection for creating/funding an asset protection trust

Amendments to 105

✧ (b)(iii) Changes UTC beneficiary benefit rule

- ◆ Rule shifted balance from historical trust law preference for grantor's intent to protection of beneficiary's interests
- ◆ Some trusts are not only for the beneficiary's benefit
- ◆ Some states have deleted beneficiary benefit rule
- ◆ We followed New Hampshire to limit beneficiary benefit to their interests as defined under trust terms

✧ Addition of (b)(xiii) to address problem of trusts without a fiduciary



Amendments to 105(b)(xiii)

✦ WEPAC committee members saw trusts

- ◆ Trust protector/advisor was appointed and given duties that are normally trustee duties
- ◆ Trust said protector/advisor was not a fiduciary
- ◆ Trust said trustee was an excluded fiduciary

✦ Result there was no fiduciary for significant trust fiduciary responsibilities

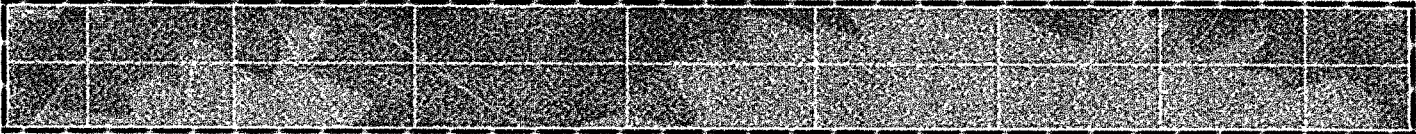
105(b)(xiii) Amendment

- ✦ Adds to mandatory trust provisions
- ✦ Protector/advisor will be fiduciary if
 - ◆ Granted powers, duties, and discretions, and
 - ◆ Trustee is excluded fiduciary as to the powers, duties and discretions granted protector/advisor
- ✦ If trustee is not excluded fiduciary, trust may provide protector/advisor is not fiduciary, change complements 718 change



107(c) Governing Law

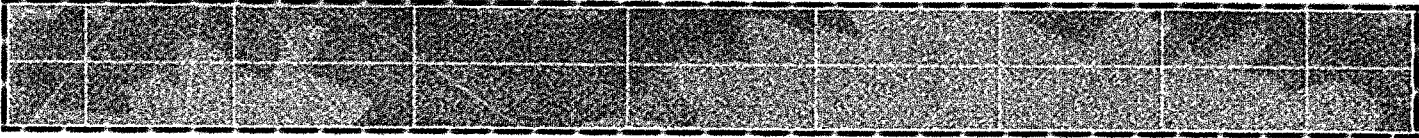
- ✧ If Wyoming law governs meaning and effect of trust terms, trust will not be void or defective, if:
 - ◆ Law or public policy of foreign jurisdiction does not recognize or limits validity or enforceability of any or all terms of trust, if
 - ◆ The terms are valid and enforceable under Wyoming laws and public policy.
- ✧ Extends protection for Wyoming asset protection trusts to jurisdictions that recognize trusts, but do not recognize creditor protection trusts



Amendment to 108 Principal Place of Administration

✱ Adds provisions to provide Wyoming law governs administration of trusts when trust:

- ◆ Specifies Wyoming is principal place of administration
- ◆ When principal of administration is changed to WY
- ◆ Trustee has principal place of business in WY or is a WY resident and majority of trustees select WY, unless terms of the trust:
 - Specify the law of another state governs trust administration
 - Expressly prohibit a change of law for trust administration, and
 - Expressly prohibit a change of law for trust administration even if a trustee from another state becomes trustee



Amendments to 718, Directed Trusts

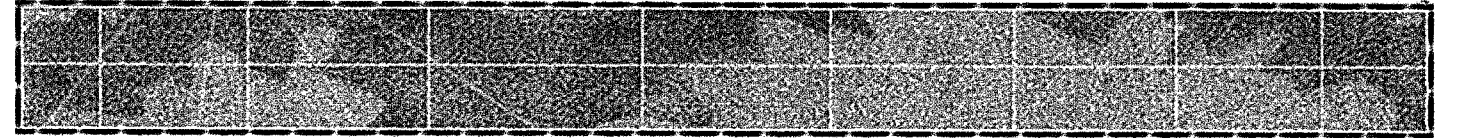
✦ Subsection (a) complements 105 change

- ◆ If trust provides protector/advisor is to perform fiduciary duties of trustee,
- ◆ Trustee is required to follow protector/advisor direction and does follow the direction, and
- ◆ Trust provides trustee is excluded fiduciary with respect to duties performed or directed
- ◆ Then protector/advisor becomes fiduciary in place of trustee

Amendments to 718, Directed

Trusts

- ✱ Subsection (b) and (c)
- ✱ Current language makes a person who has authority to appoint a protector/advisor a protector or advisor themselves
- ✱ Did that mean the person with ability to appoint is a fiduciary? That may be a problem
- ✱ Amendment clarifies that the appointed person is the protector or advisor, and the fiduciary, not the person who had appointment authority



Amendments to 802 and 814

- ✧ 802 change complements amendment to 105(b)(iii) – UTC beneficiary benefit rule
- ✧ Follows the New Hampshire solution, interests of beneficiary as defined by trust
- ✧ 814 change follows 505(d) change in 2019
- ✧ Trustee making distributions is not required to consider beneficiary's other resources unless the trust requires

Amendment 1103(e)

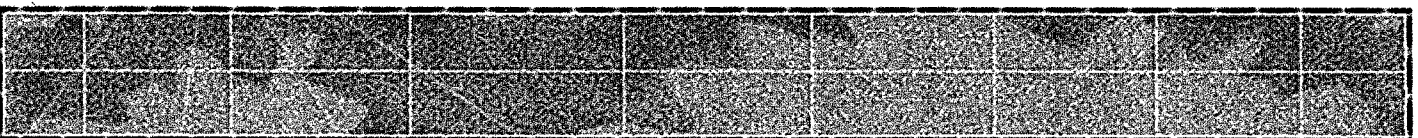
✧ Trust created before 7-1-2003

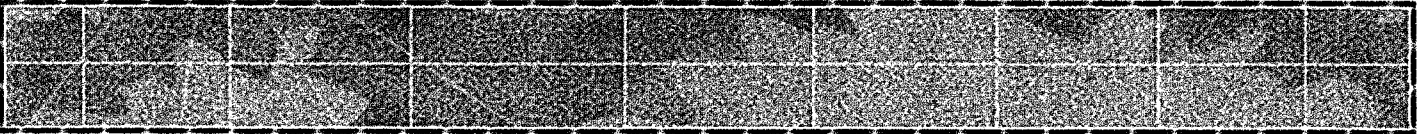
- ◆ Principal place of administration changed to Wyoming on/after 7-1-2003

- ◆ Wyoming person becomes trustee on/after 7-1-2003

- ◆ Trustee moves to Wyoming or becomes resident of Wyoming on/after 7-1-2003

✧ Wyoming UTC applies to the trust





2020 Election Possible Changes

✦ Democrat's control president, house, and senate with slim majorities, may propose tax legislation while they can

✦ Biden campaign tax objectives

- ◆ Repeal 2017 tax act – would return to 5 million for gift, estate, and GST indexed
- ◆ Retain portability
- ◆ Raise corporate tax flat rate to 28%
- ◆ Raise income tax over \$400,000 to 39.6%



Biden Tax Objectives Continue

- ✱ Capital gain over 1 million ordinary income
- ✱ Increasing the special use valuation 4X

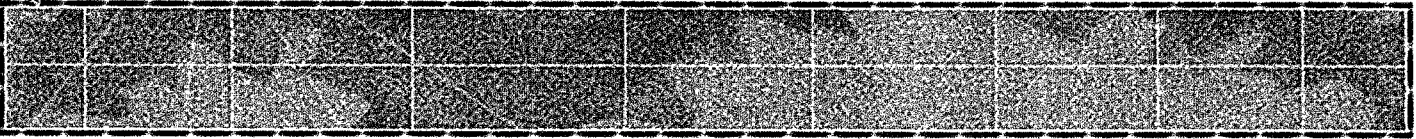
✱ Bernie Sanders' proposals:

- ◆ Return estate/GST tax to 45% over 3.5 million with gift tax over 1 million, no indexing
- ◆ Applying consistent basis rules to gifts—estate tax consistent basis came from Sanders
- ◆ Value non-business assets in entities without discounts



Sanders' Proposals Continued

- ✧ GRAT terms not less than 10 years
- ✧ GRATs remainders not less than 25% value
- ✧ Treat income tax grantor trusts as also owned by grantor for gift & estate tax
- ✧ Prevent allocation of GST exemption to trust over 50 years
- ✧ Budget reconciliation reducing taxes has to sunset, raising taxes does not have to sunset



**Thank you for the courtesy
of your time and attention.**

Questions?

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