

ALASKA NATIVE SETTLEMENT TRUSTS AND CONSIDERATIONS IN CREATING THEM

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Overview

- Alaska Native Settlement Trusts
 - What are they?
 - What assets can be contributed?
 - ANST limitations
 - How are they created?
 - What are the Pros?
 - What are the Cons?
 - Recent developments concerning Alaska Native Settlement Trusts
 - ANCs with Alaska Native Settlement Trusts
- Considerations in Creating ANSTs

ALASKA NATIVE SETTLEMENT TRUSTS

What Are AK Native Settlement Trusts?

- Created by ANCSA
 - Section 1629e
 - ANCSA was amended to include this provision on February 3, 1988 (Public Law 100-241)
- Governed by ANCSA and Alaska law
- Purpose
 - “Promote health, education, and welfare of beneficiaries and to preserve the heritage and culture of Natives”

What Assets Can Be Contributed?

- Cash
- Securities
- Operating Businesses
 - Minority interest (so long as the ANST is not operating a business)
- Land
 - No subsurface estate
 - No timber resources subject to 7(i)
 - Unless harvesting to
 - Dispose of diseased or dying or to prevent same
 - Prevent or suppress fire
 - Ensure public safety

ANST Limitations

- ANSTs shall not
 - Operate as a business
 - Alienate land or any interest in land received from the settlor ANC (except if the recipient of the land is the settlor ANC or the land is conveyed for a homesite by the Trust to a beneficiary of the Trust who is also a legal resident under Alaska law of the Native village of the settlor ANC and the conveyance does not exceed 1.5 acres)
 - Discriminate in favor of a group of individuals composed only or principally of employees, officers, or directors of the settlor ANC

What Are The Pros?

- PROS
 - Electing ANSTs tax benefits – separate tax regime
 - Not subject to regular non-grantor trust tax regime
 - Taxed on ordinary income at the lowest individual rate under IRC section 1(c) – 10%
 - Taxed on qualified dividends and capital gains at 0% (corresponds to the lowest individual tax rate above)
 - All contributions to the ANST are made by the sponsoring ANC

What Are The Pros? (continued)

- There is a four tier system to determine the taxability of distributions to the beneficiaries
 - Tier I: Distributions are Tier 1 up to taxable income of the Trust, reduced by any income tax paid on that income and increased by any tax-exempt interest. These distributions are excluded from the gross income of the beneficiary and are instead taxed at the Trust level based on the Trust's income.
 - Tier II: Distributions are Tier II to the extent that amounts that would have been Tier I distributions in prior years have not been distributed in any prior year. These distributions are excluded from gross income of the beneficiary and are instead taxed at the Trust level.

What Are The Pros? (continued)

- Tier III: Tier III distributions are taxable to the extent the Sponsoring ANC (not the Trust) has positive current year or accumulated earning and profits.
 - Tier IV: Any remaining distributions in excess of the above are Tier IV. These distributions are excluded from the gross income of the beneficiary.
- Creditor protection
- Settlor (the ANC)
 - Beneficiary
- Shareholder benefit over long period of time

What Are The Cons?

- **CONS**
 - Removes the contributed asset(s) from the company's working capital
 - Irrevocable

How Are They Created?

1. Board approval
2. Shareholder approval
3. Draft Trust document
 - Include specific election
4. Register the Trust with the State Courts
5. Contribute assets

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT _____
 Trust No. _____

REGISTRATION OF TRUST

Name of Trust: _____
 Name of Trustee: _____
 Address of Trustee: _____

1. Trustee hereby acknowledges his trusteeship and submits himself to the jurisdiction of the court in any proceeding relating to the trust that may be initiated by any interested person while the trust remains registered, providing that notice is given as provided by law.
2. The trust (has) (has not) been registered in another jurisdiction. (If registered elsewhere, state where: _____.)
 Note: If a trust has been registered elsewhere, registration in this state is ineffective until either the earlier registration is released by order of the court where prior registration occurred or an instrument executed by the trustee and all beneficiaries is filed with the registration in this state.
3. The trust is: (Check one and fill in the blanks.)
 - A testamentary trust. Name of testator: _____
 Date and place of domiciliary probate: _____
 - A written inter vivos trust. Name of settlor: _____
 Name of original trustee: _____
 Date of trust instrument: _____
 - An oral trust. Name of settlor: _____
 Other sources of funds, if any, are: _____
 Brief description of time and manner of creation of the oral trust and the terms of the trust, including the subject matter, beneficiaries and time of performance:

Trustee's Signature Date

Trustee's Signature Date

Registered in the Superior Court on _____, 20__.

Superior Court Clerk/Registrar

P-200 (2/06) (sl.2)
REGISTRATION OF TRUST AS 13.36.010

Developments Concerning ANSTs

- Applicability of Section 646 of the Internal Revenue Code
 - American Taxpayer Relief Act of 2012 provided for permanent extension of the favorable IRC section 646 tax treatment for electing ANSTs

Developments Concerning ANSTs (continued)

- The Health Care and Education Reconciliation Act of 2010 (HCERA) added IRC section 1411 effective for taxable years beginning after 12/31/12
 - Imposes a 3.8% tax (NIIT) on net investment income (NII) of individuals, trusts, and estates

Developments Concerning ANSTs (continued)

- Final regulations were published 12/2/13
 - Commentators argued for the exclusion of electing ANSTs from the application of the new investment tax
 - Final regulations exclude electing ANSTs from the application of IRC section 1411

ANCs With ANSTs

- CIRI
- Sealaska
- NANA
- Shee Atiká Incorporated (Sitka)
- Kake Tribal Corporation (Kake)

ANCs With ANSTs (continued)

- Tyonek Native Corporation (Tyonek)
- Huna Totem Corporation (Hoonah)
- Goldbelt, Incorporated (Juneau)
- Shaan-Seet, Incorporated (Craig)
- Klawock Heenya Corporation (Klawock)

CONSIDERATIONS IN CREATING ANSTS

Considerations In Creating ANSTs

- Decision Points
 - Does the ANC have taxable income?
 - How much of an ANC's assets to put into the Trust?
 - All or some?
 - Should there be a general or specific purpose?
 - One or multiple Trusts?
 - Who should be the beneficiaries?
 - Shareholders
 - All or some?

Considerations In Creating ANSTs (continued)

- Who should be the trustees?
 - The ANC Board of Directors
 - All or some?
 - Others?
- What benefits should be granted to the beneficiaries?
- Timing of distributions?
- Timing of Trust creation?

QUESTIONS?

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THANK YOU