

# State Asset Protection for IGTs (or PTEs owned by IGTs) that May Pay Income Tax Burden on Trust Income for Grantors

Companion chart to *Risks and Opportunities When Irrevocable Grantor Trusts Own Pass Through Entities that Pay State Income Tax for Their Grantors*,  
Income Tax Planning Newsletter #249 (June 14, 2023), Edwin P. Morrow (emorrow@kelleherholland.com)

LISI

Generally, at common law a creditor of a grantor of an irrevocable trust may reach the maximum amount that the trustee may distribute to or for the benefit of the grantor. Restatement (Third) of Trusts § 58(2). The Uniform Trust Code § 505 follows this rule, enabling a creditor to reach the maximum amount that may be distributed to the grantor of an irrevocable trust (without reference to whether the decision or payment is made by the trustee or not). The majority of states have statutorily modified the common law, often through a customized version of UTC § 505. This chart is intended to summarize each state's rule on when and whether a general creditor (outside of fraudulent transfer claims) may access irrevocable trust funds due to irrevocable trust funds being able to be used to pay or reimburse a grantor for federal, state or local income taxes resulting from grantor trust status (IRC Sections 671-679). This protection is not only important for state debtor/creditor law and asset protection, but for determining whether "strings" occur under IRC §2036/2038 that may cause a portion or all of the irrevocable trust to be included in the grantor's estate. See Rev. Rul. 2004-64 and discussion in the above-referenced article. It is possible that the state statute may protect a trust's assets from a grantor's creditors, but the situation may still cause an issue under IRC §§ 2036/2038 and Rev. Rul. 2004-64, such as if the grantor is trustee or has the power to use trust funds to pay taxes or reimburse themselves indirectly, or may fire and replace the trustee with themselves and accomplish the same. The IRS also hinted (but did not explicitly state) that if a "related or subordinate party" were trustee or the settlor could cause them to become trustee that this may also cause inclusion. If the state has passed the Uniform Trust Code, it will be noted under the jurisdiction with the abbreviation, "**UTC**", and if the main section 505 has been modified to be more protective than the UTC it is noted "**UTC (modified)**". Most UTC states that address this issue modify their version of UTC §505, but a few states modify other sections. Some states, such as Colorado, Delaware, Florida, Nebraska, New Hampshire, New York and Virginia, have statutes that permit a trustee (sometimes requiring the trustee to not be related or subordinate) to pay a grantor's income tax bill attributable to trust income, or reimburse the grantor for the same, *regardless* of whether the trust instrument permits such a payment (and sometimes regardless of whether the trustee is a related or subordinate party). These seven statutes are noted in the chart after the main debtor/creditor provision, if any, noted with "**Statutory Grant of Power to Trustee**". Some states have a separate Domestic Asset Protection Trust (DAPT) statute, which is often more protective but has additional requirements to qualify under, such as a qualified in-state trustee, assets in state, choice of law and/or an Affidavit of Solvency, which are not discussed herein. These statutes are noted in the chart below as "**DAPT**".

<u>State or Jurisdiction</u>	<u>State Statute with Hyperlink (if DAPT statute, noted with *)</u>	<b>Level of Protection</b>			<b>Restricts who can be Trustee (or direct payment?)</b>	<b><u>Excerpt From and Unique Features in Statute</u></b>  (any bold or bracketed comments added by the author)
		Protects Discretionary Power of Trustee to Pay Income Tax for Grantor	Protects Mandatory Direction to Trustee to Pay Income Tax for Grantor	Protects Other Parties' Powers to Pay Income Tax for Grantor		
Alabama UTC	<a href="#">Alabama (AL Code § 19-3B-505)</a>	no	no	no	n/a	(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the <b>maximum amount that can be distributed to or for the settlor's benefit.</b> "

DAPT	<a href="#">Ala. Code § 19-3E-1 Alabama Qualified Dispositions in Trust Act</a>	yes	yes	yes	yes, cannot be transferor	<p>"(b) A trust instrument may provide for one or more of the following rights, powers, or interests of a transferor: ***</p> <p>(10) The right to the potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is under a provision in the trust instrument that expressly provides for the payment of those taxes and if the potential or actual receipt of income or principal would be the result of a qualified trustee acting in either of the following ways:</p> <p>a. In the trustee's discretion or under a mandatory direction in the trust instrument.</p> <p>b. At the direction of an advisor who is acting in the advisor's discretion."</p>
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Alaska  
Non-UTC  
DAPT

[Alaska \(AK Stat. § 34.40.110\(m\)\(2\)\)](#)

yes

yes

yes

yes, but settlor can be a co-trustee "if the settlor does not have a trustee power over discretionary distributions"

(m) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the interest of a beneficiary, including a beneficiary who is the settlor of the trust, even if\*\*\* (2) the settlor potentially will receive or actually receives income or principal to pay, in whole or in part, **income taxes due on the income of the trust**, if the potential or actual receipt of income or principal will be or is made under a provision in the trust instrument that expressly provides for the payment of the taxes and **if the potential or actual receipt of income or principal would be the result of a trustee's acting in the trustee's discretion or under a mandatory direction in the trust instrument**; a distribution to pay income taxes that is made under a discretionary or mandatory provision in a governing instrument under this paragraph may be made by direct payment to a taxing authority.

Arizona UTC (modified)	<u>Arizona (Ariz. Rev. Stat. § 14-10505(A)(2)(a))</u>	yes	yes	yes	no	(a) Shall not reach any trust property based on a trustee's, trust protector's or third party's power, <b>whether or not discretionary, to pay or reimburse the settlor for any income tax on trust income or trust principal that is payable by the settlor under the law imposing the tax or to pay the tax directly to any taxing authority.</b>
Arkansas UTC	<u>Arkansas (AR Code § 28-73-505)</u>	no	no	no	n/a	(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the <b>maximum amount that can be distributed to or for the settlor's benefit</b> . If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
California Non-UTC	<u>California (CA Prob Code § 15304(c))</u>	yes	no	no	no	(c) For purposes of this chapter, <b>the settlor shall not be considered to be a beneficiary of an irrevocable trust created by the settlor solely by reason of a discretionary authority vested in the trustee to pay directly or reimburse the settlor for any federal or state income tax on trust income</b> or principal that is payable by the settlor, and a transferee or creditor of the settlor shall not be entitled to reach any amount solely by a reason of that discretionary authority.
Colorado UTC (modified)	<u>Colorado (Co Code §15-5-818(5))</u>	yes	no	no	yes, only independent trustee	"2. Unless otherwise provided in the governing instrument, an <b>independent</b> trustee of a trust may, from time to time, in the trustee's discretion, distribute to the settlor an amount equal to any income taxes on any portion of the trust's taxable income for which the settlor is liable.*****"Independent trustee" means a trustee who is not related or subordinate to the settlor within the meaning of section 672 (c) of the federal "Internal Revenue Code of 1986", as amended."

Connecticut UTC (modified)	<u>Connecticut (CT Gen Stat § 45a-499fff)</u>	yes	probably	no	no	"The settlor of an irrevocable trust shall not be deemed to have a beneficial interest in such trust merely because the trustee is authorized under the trust instrument or any other provision of law to (1) pay or reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing such tax; or (2) pay any such tax directly to the taxing authorities. No creditor of the settlor of an irrevocable trust shall be entitled to reach any trust property based on the discretionary powers described in this section."
DAPT	<u>CT. Gen Stat § 45a-487i "Connecticut Qualified Dispositions in Trust Act"</u>	yes	probably	no	yes, other than the transferor	"(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of the taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee acting: (A) In the qualified trustee's discretion; or (B) At the direction of a trust director described in section 45a-487l who is acting in the director's discretion."
Delaware Non-UTC	<u>Delaware (12 Del Code § 3536(c)(2))</u>	yes	no	no	no	(2) The trustee, under the governing instrument or § 3344 of this title, may, <b>in its discretion (or at the direction of or with the consent of an adviser other than the trustor), reimburse the trustor for any income tax liability attributable to the trust.</b>

Statutory Grant of [12 DE Code § 3344](#)  
Power to Trustee

(a) Unless the terms of the governing instrument expressly provide that a trustor may not be reimbursed by a trust for the trustor's personal income tax liability, if the trustor of a trust is treated under 26 U.S.C. § 671 et seq. as the owner of all or part of the trust, the trustee (other than a trustee who is the trustor or a person who is a "related or subordinate party" with respect to the trustor within the meaning of 26 U.S.C. § 672(c)) may, in the trustee's sole discretion, or at the direction or with the consent of an adviser (who is not the trustor or a person who is a "related or subordinate party" with respect to the trustor within the meaning of 26 U.S.C. § 672(c)), reimburse the trustor for any amount of the trustor's personal federal, state, county, metropolitan-region, city, local, foreign, or other income tax liability that is attributable to the inclusion of the trust's income, capital gains, deductions, and credits in the calculation of the trustor's taxable income. The trustee may pay such amount to the trustor directly or may pay such amount to an appropriate taxing authority on the trustor's behalf, as the trustee determines in the trustee's sole discretion. No policy of insurance on the trustor's life held in the trust nor the cash value of any such policy nor the proceeds of any loan secured by an interest in the policy may be used to reimburse the trustor or to pay an appropriate taxing authority on the trustor's behalf. Neither the trustee's power to make payments to, or for the benefit of, the trustor under this section, nor the trustee's decision to exercise such power in favor of the trustor, shall cause the trustor to be treated as a beneficiary of the trust for purposes of § 3536(c) of this title or for other purposes of Delaware law.

DAPT	<a href="#">12 Del Code § 3570-3576 Qualified Dispositions in Trust Act.</a>	yes	yes	no	yes, must be qualified	"9. The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee's or qualified trustees' acting: A. In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or B. Pursuant to the transferor's exercise of a lifetime power of appointment or at the direction of an adviser described in paragraph (8)c. of this section who is acting in such adviser's discretion;"
District of Columbia UTC	<u>District of Columbia (DC Code § 19-1305.05)</u>	no	no	no	n/a	(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
Florida UTC (modified)	<u>Florida (Fla Stat. § 736.0505(1)(c))</u>	yes	no	no	no	(c) Notwithstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a <b>discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.</b>

Statutory Grant of [Florida \(Fla. Stat. §736.08145\)](#)  
Power to Trustee

(1)(a) Except as otherwise provided under the terms of a trust, if all or any portion of the trust is treated as being owned by a person under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee's sole discretion, reimburse the person being treated as the owner for any amount of the person's personal federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's taxable income. In the trustee's sole discretion, the trustee may pay such tax reimbursement amount, determined without regard to any other distribution or payment made from trust assets, to the person directly or to the appropriate taxing authority.

Georgia  
Non-UTC

[Georgia \(GA Code § 53-12-82\)](#)

yes

yes

yes

no

"(B) With respect to an irrevocable trust: (i) **Creditors or assignees of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit** during the settlor's life or that could have been distributed to or for the settlor's benefit immediately prior to the settlor's death, provided that, if a trust has more than one settlor, the amount the creditors or assignees of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and (ii) **The portion of a trust that can be distributed to or for the settlor's benefit pursuant to the power of a trustee, whether arising under the trust instrument or any other law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that is treated as the settlor's individual income under applicable law shall not be considered an amount that can be distributed to or for the settlor's benefit during the settlor's life or that could have been distributed to or for the settlor's benefit immediately prior to the settlor's death;**"

Hawaii UTC	<a href="#">Hawai'i (Haw. Rev. Stat. § 554D-505)</a>	no	no	no	n/a	"(2) Except as provided in chapter 554G, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and"
Hawaii (DAPT)	<a href="#">Hawai'i DAPT (Haw. Rev. Stat. § 554G-5(c)(7)) (Permitted Transfers in Trust Act)</a>	yes	yes	yes	yes	<b>(7) The transferor's potential or actual receipt of income or principal to pay income taxes due on income of the trust if the trust instrument includes a provision allowing or directing the use of trust funds to pay income taxes due, or if the trustee acts in the trustee's discretion to allow payment of income taxes due on the trust income;</b>
Idaho Non-UTC	<a href="#">Idaho (Idaho Code Ann. § 15-7-502(4))</a>	yes	yes	yes	no	4) If a person is both a settlor and beneficiary of the same trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest in such trust does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate that relates to the portion of the trust that was contributed by the settlor. For the purposes of this subsection, however, a <b>settlor shall not be considered to be a beneficiary of an irrevocable trust created by the settlor and taxed for federal income tax purposes pursuant to the grantor trust rules of the Internal Revenue Code, sections 671 through 679, inclusive, if the settlor's only beneficial interest in such trust consists of the right to receive a distribution from such trust in an amount equal to or less than the amount of the federal and state income tax liability incurred by the settlor as a result of such trust being characterized as a grantor trust pursuant to the aforementioned grantor trust rules.</b>



<b>Illinois UTC</b>	<a href="#"><u>Illinois (760 ILCS 3/505(a)(3))</u></a>	<b>yes</b>	no	no	no	(3) Notwithstanding paragraph (2), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor under the law imposing the tax.
<b>Indiana Non-UTC</b>	<a href="#"><u>IN Code § 30-4-3-2</u></a>	<b>no</b>	<b>no</b>	<b>no</b>	n/a	<p>"(a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.</p> <p>(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest will not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate.</p> <p>(c) A protective provision similar to that authorized by subsection (a) prevents a creditor of the settlor from satisfying a claim from the settlor's interest in the trust estate when the settlor is also a beneficiary of the trust if the trust is one (1) of the following:</p> <p>***</p> <p>(2) A legacy trust established under IC 30-4-8" [Legacy Trust DAPT, see below]</p>
<b>DAPT</b>	<a href="#"><u>Indiana (DAPT "Legacy Trust" – IC §30-4-8-13)</u></a>	<b>yes</b>	<b>yes</b>	<b>yes</b>	yes, must be qualified	<p>"(a) A legacy trust is not considered revocable because of the inclusion of one (1) or more of the following:***(3) The transferor's potential or actual receipt of income or principal, including a right to income retained in the trust."</p>

Iowa Non-UTC	<u>Iowa (Iowa Code Ann. § 633A.2304)</u>	yes	yes	no	no	3. The assets of an irrevocable trust shall not become subject to the claims of creditors of the settlor of a trust solely due to a provision in the trust that allows a trustee of the trust to reimburse the settlor for income taxes payable on the income of the trust. This subsection shall not limit the rights of the creditor of the settlor to assert a claim against the assets of the trust due to the retention or grant of any rights to the settlor under the trust instrument or any other beneficial interest of the settlor other than as specifically set forth in this subsection.
Kansas UTC	<u>Kansas (KS Stat. §58a-505(a)(2))</u>	no	no	no	n/a	"(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution."
Kentucky UTC	<u>Kentucky (Ky. Rev. Stat. Ann. § 386B.5-020(7)(c))</u>	yes	yes	no	no	"For purposes of this subsection, a person has not created a trust for such person's own benefit solely because a trustee who is not such person is authorized under the trust instrument to pay or reimburse such person for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by such person under the law imposing the tax."
Louisiana Non-UTC	<u>Louisiana (LA Rev. Stat. 9:2004)</u>	no	no	no	n/a	"Seizure by creditor; general rule <b>A creditor may seize only:</b> (1) An interest in income or principal that is subject to voluntary alienation by a beneficiary. <b>(2) A beneficiary's interest in income and principal, to the extent that the beneficiary has donated property to the trust, directly or indirectly.</b> A beneficiary will not be deemed to have donated property to a trust merely because he fails to exercise a right of withdrawal from the trust."

Maine UTC	<u>Maine (18-B ME Rev Stat § 505)</u>	no	no	no	n/a	"B. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit."
Maryland UTC	<u>Maryland (Md. Code Ann. Estates and Trusts § 14.5-1003(a)(1))</u>	yes	yes	no	no	provides protection (though in an odd way by deeming the settlor not to be a settlor) "(1) That interest is the authority of the trustee under the trust instrument or any other provision of law to pay or reimburse the individual for any tax on trust income or trust principal that is payable by the individual under the law imposing that tax; or"
Massachusetts UTC	<u>Massachusetts (M.G.L.A. 203E § 505(a)(2))</u>	yes	no	no	no	(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit and, if a trust has more than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. Trust property shall not be considered distributable to or for the settlor's benefit solely because the trustee has the discretion under the terms of the trust to reimburse the settlor for any tax on trust income or capital gain that is payable by the settlor under the law imposing such tax; no creditor or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based on the discretionary authority described in this sentence.
Michigan UTC	<u>Michigan (MI Comp L § 700.7506(1)(c)(2))</u>	yes	yes	yes	no	curiously, protects the discretion for trustee to pay <i>any</i> taxes of the grantor, apparently not limited to income tax or even if it's a grantor trust. "(ii) The maximum amount that can be distributed to or for the settlor's benefit <i>exclusive of sums to pay the settlor's taxes during the settlor's lifetime</i> ."
DAPT	<u>MI Comp L § 700.1041 et seq (Qualified Dispositions in Trust Act)</u>					
Minnesota UTC	<u>Minnesota (Minn. Stat. §501C.0505)</u>	no	no	no	n/a	"(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit."

<b>Mississippi UTC (modified)</b>	<a href="#">Mississippi (Miss. Code § 91-8-504(c)(1))</a>	<b>yes</b>	yes	no	no	"(1) The power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other provision of law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee under such authority."
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<b>DAPT</b>	<a href="#">Miss. Code Ann. §§ 91-9-701—91-9-723 (Qualified Dispositions in Trust Act)</a>
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<b>Missouri UTC (modified)</b>	<a href="#">Missouri (RS Mo § 456.5-505)</a>	<b>yes</b>	<b>yes</b>	<b>yes</b>	no	<p>"3. With respect to an irrevocable trust with a spendthrift provision, a spendthrift provision will prevent the settlor's creditors from satisfying claims from the trust assets except:</p> <p>(1) Where the conveyance of assets to the trust was fraudulent as to creditors pursuant to the provisions of chapter 428; or</p> <p>(2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the trust became irrevocable:</p> <p>(a) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to amend the trust; or</p> <p>(b) The settlor was one of a class of beneficiaries and retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument."</p>
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<b>Montana UTC</b>	<u>Montana (M.C.A. § 72-38-505(b))</u>	<b>yes</b>	no	no	no	"(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. A trustee's discretionary authority to pay directly or to reimburse the settlor for any tax that is payable by the settlor on trust income or principal may not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor is not entitled to reach any amount solely by reason of this discretionary authority."
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<b>Nebraska UTC</b>	<u>Nebraska (NE Stat. §30-3850(a)(2)(B))</u>	<b>yes</b>	yes	no	no, but if granted in statute not trust, cannot be related or subordinate party	"(B) A trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal, that is payable by the settlor under the law imposing the tax, shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount solely by reason of this discretionary authority."
	<u>Nebraska (NE Stat. §30-3850(a)(2)(C))</u>					"(C) Anything in the Nebraska Uniform Trust Code to the contrary notwithstanding, the settlor shall not be considered to be a beneficiary of an irrevocable trust solely by reason of the trustee's authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor under the law imposing the tax, whether such authority arises pursuant to subsection (b) of section 30-3881 or the terms of the trust."

Statutory Grant of [Nebraska Statutes 30-3881](#)  
Power to Trustee [\(modified UTC §816\)](#)

(b) Except as otherwise provided under the terms of the trust, a trustee, other than a trustee who is a related or subordinate party with respect to the settlor within the meaning of section 672(c) of the Internal Revenue Code as defined in section 49-801.01, **may, from time to time, in the trustee's absolute discretion, pay directly to the taxing authorities or reimburse the settlor for any tax on trust income or principal that is payable by the settlor for the portion of the settlor's income tax liability attributable to the trust under sections 671 to 678 of the Internal Revenue Code** as defined in section 49-801.01 or any similar tax law. A trustee shall not exercise or participate in the exercise of discretion pursuant to this subsection in a manner that (1) would cause the inclusion of the trust assets in the settlor's gross taxable estate for federal estate tax purposes at the time of exercise or (2) is inconsistent with the qualification of all or any portion of the trust for the federal gift or estate tax marital deduction, to the extent the trust is intended to qualify for such deduction.

**Nevada  
Non-UTC**

Nevada (NV Rev Stat § 163.5559(1)(a)

yes

no

yes

yes, "other  
than the  
settlor"

"(a) A discretionary power granted to a person other than the settlor by the terms of the trust or by operation of law or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax."

**DAPT**

NV Rev Stat § 166.010 et seq  
("Spendthrift Trust Act of Nevada" )

**New Hampshire  
UTC (modified)**

New Hampshire (NH Rev Stat § 564-B:5-  
505A(e)(6)

yes

yes

yes

yes, but can  
be "trustee,  
trust advisor  
protector",  
presumably  
incl. a  
settlor

"(6) A trust in which a trustee, trust advisor, or trust protector has a duty or a discretionary power to:  
(A) Pay directly to any taxing authority any tax that is:  
(i) imposed on the trust's income or principal; and  
(ii) Payable by the settlor under the law imposing the tax."

Statutory Grant of Power to Trustee

[NH Rev Stat § 564-B:8-816\(c\)](#)

"(c) Except as otherwise provided under the terms of the trust, a trustee shall have the discretionary power to reimburse the settlor for the portion of the settlor's income tax liability attributable to the trust under section 671 of the Internal Revenue Code or any similar tax law."

New Jersey UTC	<u>New Jersey (NJ Rev Stat § 3B:31-39)</u>	yes	no	no	no	"(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution." Strangely, New Jersey's statute copied below (which is not included in its uniform trust code) did not address this section, creating a conflict. In my summary, I presume that the more specific statute quoted below would control over NJ's version of UTC Section 505 quoted here (which most states modify or at least address when solving the issue).
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"a. The right of any creator of a trust to receive either the income or the principal of the trust or any part of either thereof, presently or in the future, shall be freely alienable and shall be subject to the claims of his creditors, notwithstanding any provision to the contrary in the terms of the trust.

b. A trustee's discretionary authority to pay trust income or principal to the creator of such trust in an amount equal to the income taxes on any portion of the trust principal chargeable to the creator shall not be considered to be a right of the trust creator to receive trust income or principal within the meaning of subsection a. of this section. The trust creator shall not be considered to have the right to receive income or principal of the trust solely because the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator shall be entitled to reach any trust property based on the discretionary powers described in this subsection."

**New Mexico  
UTC**

New Mexico (NM Stat § 46A-5-505)

no

no

no

n/a

"(2) with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and"



**New York**  
**Non-UTC**

New York (NY EPT § 7-3.1(d))

**yes**

no

no

no

"(d) A disposition in trust shall not be considered to be for the use of the creator under paragraph (a) of this section by reason of the trustee's authority to pay trust principal to the creator pursuant to section 7-1.11 of this article. Nor shall a disposition in trust be considered to be for the use of the creator under paragraph (a) of this section where the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator shall be entitled to reach any trust property based on the discretionary powers described in this paragraph."

(a) Notwithstanding any contrary provision of law, the trustee of an express trust, unless otherwise provided in the disposing instrument, may, from time to time, pay from principal to the creator of such trust an amount equal to any income taxes on any portion of the trust principal with which he is charged.

(b) The provisions of this section do not apply to any trust by which a future estate is indefeasibly vested in the United States or a political subdivision for exclusively public purposes; a corporation organized exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; a trustee, or a fraternal society, order or association operating under the lodge system, provided the principal or income of such trust is to be used by such trustee or by such fraternal society, order or association exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or of such fraternal society, order or association is carrying on propaganda or otherwise attempting to influence legislation; or any veteran's organization incorporated by Act of Congress, or of its department or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

North Carolina UTC (modified)	North Carolina (N.C. Gen. Stat. Ann. § 36C-5-505(a)(2a)	yes	no	no	no	“(2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount.”
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<b>North Dakota UTC</b>	<u>North Dakota (ND Code §59-13-05)</u>	<b>no</b>	<b>no</b>	<b>no</b>	n/a	***With respect to an irrevocable trust, other than a special needs trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.***
<b>Ohio UTC (modified)</b>	<u>Ohio (Ohio R.C. §5805.06(B)(2)(c))</u>  <u><a href="#">Ohio (Ohio R.C. §5816.01 et seq. ("Ohio Legacy Trust Act"))</a></u>	<b>yes</b>	no	yes	yes, "other than the settlor"	<b>protects discretionary power to pay income tax or reimburse by a person "other than the settlor", presumably including an LLC/LP/Corp (PTE)</b> "(c) Trust property that, pursuant to the exercise of a discretionary power by a person other than the settlor, could be paid to a taxing authority or to reimburse the settlor for any income tax on trust income or principal that is payable by the settlor under the law imposing the tax"
<b>Oklahoma Non-UTC</b>	<u>Oklahoma (60 OK Stat § 175.25)</u>  <u>Oklahoma (60 OK Stat. § 175.92(2))</u>	<b>no</b>	<b>no</b>	<b>no</b>	n/a	"H. Nothing in this act shall authorize a person to create a spendthrift trust or other inalienable interest for his own benefit. The interest of the trustor as a beneficiary of any trust shall be freely alienable and subject to the claims of his creditors."  "2. A creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the benefit of the settlor. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the interest of the settlor in the portion of the trust attributable to the contribution of that settlor."
<b>DAPT</b>	<u>31 Okla. Stat. § 10 et seq. ("Family Wealth Preservation Act")</u>					

Oregon UTC (modified)	<u>Oregon (ORS §130.315(1)(d))</u>	yes	no	no	no	"(d) Notwithstanding the provisions of paragraph (b) of this subsection, the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a <b>discretionary power granted to the trustee by the terms of the trust or any other provision of law to pay the amount of tax owed directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable or has been paid by the settlor under the law imposing the tax</b> "
Pennsylvania UTC (modified)	<u>Pennsylvania (20 Pa. C.S.A. § 7745(2))</u>	yes	no	no	no	"(2) A judgment creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the creditor or assignee of a particular settlor may reach the portion of the trust attributable to that settlor's contribution. However, the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor solely because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for any income tax payable by the settlor attributable to trust income or principal."
Rhode Island Non-UTC						

<b>DAPT</b>	<u>Rhode Island (RI Gen L § 18-9.2-2)</u> <u>("Qualified Dispositions in Trust Act")</u>	yes	no	no	yes, qualified trustee	<p>"(I) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee's or qualified trustees' acting:</p> <p>(1) In such qualified trustee's or qualified trustees' discretion; or</p> <p>(2) At the direction of an advisor described in subsection (9)(iii) of this section who is acting in such advisor's discretion. Distributions to pay income taxes made under discretion included in a governing instrument pursuant to subparagraph (C), subparagraph (F) or this subparagraph (I) of subsection (10)(ii) of this section may be made by direct payment to the taxing authorities."</p>
<b>South Carolina UTC</b>	<u>South Carolina (SC Code § 62-7-505)</u>	no	no	no	n/a	<p>"(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution."</p>
<b>South Dakota Non-UTC</b>	<u>South Dakota (SD. Codified L. §55-1-36.1)</u>	yes	no	no	no	<p>"Regardless of whether a disposition is a qualified disposition pursuant to chapter 55-16, where a trustee is granted a discretionary power by the terms of the trust instrument, or any provision of law, to pay directly to any taxing authority, or to reimburse the person liable for, any tax imposed by a taxing authority on the person by reason of the person being treated as the owner of all or any portion of the trust property pursuant to §§671 to 678, inclusive, of the Internal Revenue Code of 1986, 26 U.S.C. §§671 to 678, inclusive, as of January 1, 2016, and the U.S. Treasury Regulations promulgated thereunder, as of January 1, 2016"</p>

	SD Codified L § 55-16-1 et seq. (Qualified Dispositions in Trust)				yes, qualified	
Tennessee UTC (modified)	<u>Tennessee (TN Code § 35-15-505(c))</u>	yes	yes	no	no	"a. For purposes of subdivision (a)(2), the power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee pursuant to such authority, shall not be considered an amount that may be distributed to or for the settlor's benefit."
DAPT	<u><a href="#">TN Code § 35-16-101 et Seq. ("Tennessee Investment Services Act of 2007")</a></u>				yes, qualified trustee	
Texas Non-UTC	<u>Texas (Tex. Prop. Code Ann. § 112.035)</u>	yes	yes	no	yes, not the settlor	<b>"(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax."</b>

Utah UTC	<a href="#">Utah (UT Code §75-7-505(2)(c)) - Utah recently amended this paragraph to be more protective, effective 5/3/2023, if you just search for the statute you may find the old version</a>	yes	no	yes, advisors to trustee	yes, not the settlor	<p>(a) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-502, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.</p> <p>(b) With respect to an irrevocable trust that has more than one settlor, other than an irrevocable trust that meets the requirements of Section 25-6-502, the amount a creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.</p> <p>(c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust solely because <b>the trustee may make a discretionary distribution reimbursing the settlor for income tax liability of the settlor attributable to the income of the irrevocable trust</b>, when the distribution is:</p> <ul style="list-style-type: none"> <li>(i) subject to the discretion of a trustee who is not the settlor;</li> <li>(ii) subject to the consent of an advisor who is not the settlor; or</li> <li>(iii) at the direction of an advisor who is not the settlor.</li> </ul>
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[UT Code § 25-6-501 et seq. \("Asset Protection Trust"\)](#)

yes

yes

no

yes,  
qualified  
trustee but  
grantor may  
be a co-  
trustee

(7) The provisions of Subsection (3) may apply to a trust even if:  
(a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor may not determine whether a discretionary distribution will be made;  
(b) the settlor participates in a determination regarding whether a discretionary distribution is made to the settlor by:  
(i) requesting a distribution from the trust;  
(ii) consulting with the trustees regarding whether a discretionary distribution will be made;  
(iii) exercising a right to consent to or veto the distribution under a power described in Subsection (7)(e);  
(iv) signing documentation in the settlor's capacity as a cotrustee that implements a distribution when the other trustees use discretionary power to independently authorize a distribution; or  
(v) participating in an action authorizing a distribution if the other trustees can authorize the distribution without the settlor's participation.

**Vermont  
UTC**

[Vermont \(14 V.S.A. § 505\)](#)

no

no

no

n/a

"(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit."

**Virginia  
UTC (modified)**

[Virginia \(Va. Code Ann. § 64.2-747\(a\)\(2\)\)](#)

yes

no

no

no

"2. With respect to an irrevocable trust, except to the extent otherwise provided in §§ 64.2-745.1 and 64.2-745.2, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.  
**A trustee's discretionary authority to pay directly or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount solely by reason of this discretionary authority."**



Statutory Grant of Power to Trustee (UFIPA modified)	<a href="#">Va. Code § 64.2-1065(C) Disbursements from Principal</a>	yes	allows but does not protect as paragrap h above	no	no	C. Notwithstanding any other provision of law and unless the terms of the trust provide to the contrary, a trustee may pay from the principal of the trust from time to time (i) the federal or state income taxes, or both, imposed upon the settlor on income of the trust that is not distributed to the settlor or (ii) such amounts that are required to reimburse the settlor for any federal or state income taxes, or both, imposed on the settlor on income of the trust that is not distributed to the settlor. The trustee shall not have the power to make payments pursuant to this subsection with respect to any trust where a charitable income, estate, or gift tax deduction has been allowed, in whole or in part, for the contributions to such trust if the exercise of such power would limit or reduce the amount of such deduction.
DAPT	<a href="#">Virginia (Va. Code Ann. § 64.2-745.1-2) ("self-settled spendthrift trust")</a>	yes	yes	no	yes, qualified trustee	"D. A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests: *** 10. A settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the settlor for such tax payments."

Washington  
Non-UTC

[Washington \(RCW §19.36.020\)](#)

No

No

No

N/A

"That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, **made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person.** For purposes of this section, a person shall not be treated as having made a disposition in trust for the use of that person by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose, notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power."

[Washington \(RCW §6.32.250\)](#)

Property exempt from seizure.

This chapter does not authorize the seizure of, or other interference with, (1) any property which is expressly exempt by law from levy and sale by virtue of an execution, attachment, or garnishment; or (2) any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by, or the fund so held in trust has proceeded from, a person **other than the judgment debtor**; or (3) the earnings of the judgment debtor for personal services to the extent they would be exempt against garnishment of the employer under RCW 6.27.150. For purposes of this section, a person shall not be treated as having made a disposition in trust for the use of that person by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose, notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power.

West Virginia UTC	<u>West Virginia (WV Code § §44D-5-505)</u>	No	No	No	N/a	(2) During the lifetime of the grantor, with respect to an irrevocable trust, except to the extent otherwise provided in sections five hundred three-a, five hundred three-b and five hundred three-c of this article, a <b>creditor or assignee of the grantor may reach the maximum amount that can be distributed to or for the grantor's benefit.</b>
	<u>West Virginia (WV Code § §44D-5-503a-c) (qualified self-settled spendthrift trusts")</u>	yes	yes	yes	yes, qualified trustee	"(c) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests: *** (10) A grantor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the grantor for such tax payments."
Wisconsin UTC	<u>Wisconsin (WI Stat § 701.0505(1)(a)(2))</u>	No	No	No	N/A	2. With respect to an irrevocable trust that is not a trust for an individual with a disability, upon application of a judgment creditor of the settlor, the court may, if the trust instrument requires or authorizes the trustee to make payments of income or principal to or for the settlor, order the trustee to satisfy part or all of the judgment out of part or all of the payments of income or principal as they are due, presently or in the future, or which are payable in the trustee's discretion.

Wyoming UTC	<u>Wyoming (WY Stat § 4-10-506(a-c))</u>	yes	no	no	Yes, must have qualified trustee	<p><b>(b) With respect to an irrevocable trust with a spendthrift provision, a creditor or assignee of the right of a settlor are limited by the provisions of W.S. 4-10-510 et seq.</b></p> <p>(c) With respect to irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the right of a settlor, including a creditor bringing any claim for forced heirship or legitime, are limited by W.S. 4-10-504(b) if:</p> <p>(i) The transfer of property to the trust by the settlor was not in violation of the Uniform Fraudulent Transfers Act by applying the same standard of proof as provided in W.S. 4-10-517;</p> <p>(ii) At least one (1) trustee of the irrevocable trust is a qualified trustee; and</p> <p>(iii) The trustee with authority to make distributions to the settlor is not a trust beneficiary, related to the settlor or subordinate to the settlor under Internal Revenue Code section 672(c).</p>
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