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Spotlight on Mississippi: Domestic Asset Protection Trust Legislation

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Mississippi recently became the 16th state to pass legislation permitting the creation of domestic asset protection trusts. The new law was effective July 1, 2014.

Under the new Mississippi Act, a domestic asset protection trust, called a "qualified disposition trust" (QDIT), is an irrevocable trust that contains a spendthrift clause and incorporates Mississippi law to govern the validity, construction and administration of the trust. Generally, the assets in a QDIT are protected from seizure by future creditors of the creator, subject to the exceptions discussed below.

At least one of the trustees of the QDIT must be an individual who is a resident of Mississippi or a Mississippi bank or trust company. The Mississippi trustee must maintain or arrange for custody in Mississippi of some or all of the trust assets, maintain records for the trust on an exclusive or non-exclusive basis, prepare or arrange for the preparation of the required income tax returns for the trust or otherwise materially participate in the administration of the trust.

If you are creating the QDIT, you cannot be a trustee. You may, however, retain certain rights and powers with respect to the trust, including the potential or actual receipt of income. You may also retain the right to the potential or actual receipt of principal, if distributed in the discretion of the trustee or pursuant to an ascertainable standard. You cannot retain any powers or interests that are not specifically authorized by the new Act. Other family members may also be beneficiaries of the trust.

Before you transfer assets to the QDIT, you must sign an affidavit stating the following:

1. you have full right, title and authority to transfer the assets to the trust;
2. the transfer will not render you insolvent;
3. you do not intend to defraud a creditor by the transfer;
4. you do not have any pending or threatened court action against you, other than those identified in the affidavit;
5. you are not involved in any administrative proceedings, except for proceedings identified;
6. you do not contemplate filing for bankruptcy;
7. the assets transferred to the trust were not derived from unlawful activities; and
8. you are a named insured of a general liability policy, and, if applicable, a professional liability insurance policy with policy limits of at least \$1,000,000 for each respective policy.

Under the new Mississippi Act, there are several specific exceptions provided which would allow certain creditors to reach the assets of your trust. If you have not paid child support, alimony or a court ordered property settlement to a spouse who was married to you prior to your transfer of property to the QDIT, your ex-spouse can bring an action against the trustee to satisfy the past due payments. There is also an exception for an unpaid tort judgment for death, personal injury or property damage where the tortious act occurred before the date of the transfer of property to the QDIT. There are further exceptions for the State of Mississippi or any political subdivision of the state and to any creditor in an amount not to exceed \$1,500,000 if you fail to maintain the liability insurance as provided in the affidavit. These exceptions also require a court order that

your debt is past due and that claimant has made reasonable attempts to collect the debt from your other sources.

This new Mississippi Act is complex but can provide reasonable asset protection under the appropriate circumstances. Should you have any questions about this Act or otherwise wish to consider establishing a QDIT, please contact any one of the attorneys in the Firm's Tax Group.