

# SELL YOUR BUSINESS PAY NO TAX

§453 seller-appointed trustee deferred trust



"Cover your tax with Trust tax-retained returns  
& build a whole other fortune to boot."

By Michael George, Juris Doctorate

# **SELL YOUR BUSINESS, PAY NO TAXES**

## **§ 453 Seller-Appointed Deferred Trust**

*Cover your tax with Trust tax-retained returns  
& build a whole other fortune to boot*

A white paper by Michael George, J.D.

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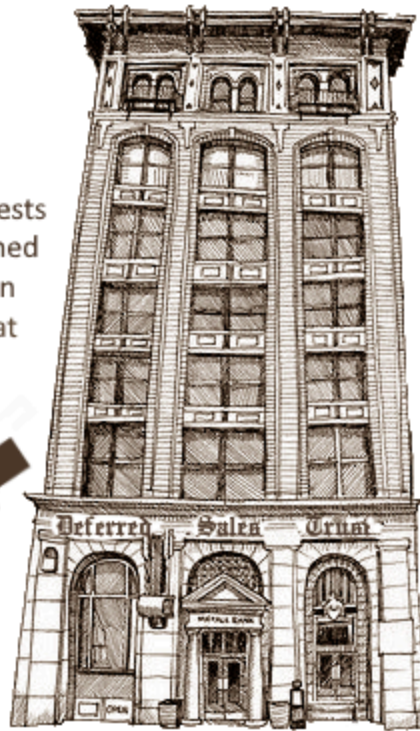
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# § 453 Deferred Trust



1. transfer assets to Trust



2.

Trust sells assets & reinvests sales proceeds & retained taxes to compound an additional fortune that covers the taxes!



3.

Trust pays Seller proceeds on installment over life expectancy



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## i | elevator pitch

A Commission-Free Deferred Sales Trust (DST) enables you to defer capital gains tax on the sale of your business, real estate, and most other investments for your lifetime, except for publicly traded stocks, bonds, and business inventories.

Here's the process: you transfer your business to an independent, non-grantor irrevocable trust in exchange for a fair market value installment agreement. This agreement requires at least two payments, with the final one due by the end of your IRS-published life expectancy. The trust then sells the property to a third-party buyer for the same amount specified in your installment agreement. Your trust does not incur capital gains tax or any other tax liability from the sale because its 3rd party sales price equals what it bought it for from you.

According to IRS Code § 453, the seller only pays capital gains tax when the trust starts distributing the installment proceeds to you, which can be years or even decades later, depending on your age and income needs. The trust retains and reinvests the proceeds from the sale, including the capital gains tax. This reinvestment can significantly grow the trust's assets, creating a compounded fortune for your beneficiaries—enhanced not only by the initial principal and gains but also by the deferred capital gains taxes.

In this arrangement, the IRS receives its taxes eventually, but their value is diminished significantly by inflation due to the delay.

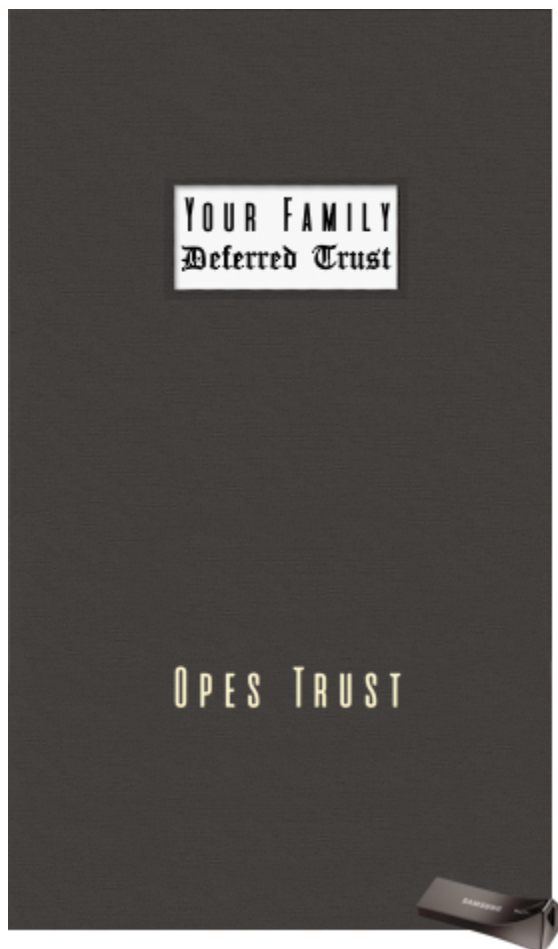
A common issue with DSTs is the high trustee commission fees, which are commonly 1.5% annually of the total trust value (including principal, retained capital gains taxes, and trust return on investment). These fees will significantly reduce the trust's benefits for both the seller and their beneficiaries.

Although an independent trustee is necessary, there is no requirement to choose a corporate trustee with high fees. Most individuals over 17 who are not closely related to the business seller and are mentally competent can serve as trustees, except in states requiring licensed trustees (detailed further in Chapter 3).

Selecting a trusted friend or in-law as a trustee, and compensating them reasonably or not at all, can save 1.5% of the trust's annual value and avoid significant opportunity costs. This approach allows the trust's assets to grow exponentially over time, far surpassing the original capital gain from the sale.

Many people already serve as trustees for their living trusts in the U.S., and serving as a DST trustee requires no special expertise beyond that.

This white paper introduces a unique commission-free DST strategy, as no similar approach has been published at the time of writing. Financial firms have little incentive to offer commission-free DSTs since they do not profit from them. Adopting a commission-free DST could be one of the most effective financial strategies for maximizing returns on your investments by deferring capital gains taxes and accumulating a compounded fortune from the retained taxes.



[Sign up](#) for my Commission-Free Deferred Sales Trust Seminar at [OpesTrust.us](https://OpesTrust.us) to learn about your own commission-free DST.

Please note that services and consultations are exclusively available to members. Seminar registration is limited to just 24 investors when open, and there's no guarantee of future sessions. Register now to secure your spot!



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## ii | introduction

Imagine decades-long returns on retained capital gains taxes that not only cover those taxes, but, on top of that, produce very substantial wealth otherwise unavailable to business seller plebs not in the know.

Certainly taxes delayed are taxes denied.

Capital gains taxes retained in trust over decades is wealth generation the IRS authorizes under IRS Code, § 453 in the form of a trust installment sale.

The missed opportunities by business sellers who fail to utilize the Commission-Free Deferred Sales Trust (DST) strategy are staggering. In the example used throughout this white paper, consider a scenario with:

- a 10-year DST term
- a 60-year-old business seller
- a \$1 million business sale
- with \$500,000 in capital gains

This results in a liability of \$127,000 in average federal and state capital gains taxes—potentially higher if there's depreciation clawback.

By paying capital gains taxes upfront, a compounded fortune of \$513,422—made solely from the tax-free growth on deferred capital gains—would be lost forever.<sup>1</sup>

Essentially, you end up paying no capital gains tax at all because the gains made on the deferred taxes you owe the IRS will more than cover the tax bill, leaving a fortune to boot for your trust beneficiaries.

And this example only accounts for a 10-year DST. A 60-year-old has an IRS-expected lifespan of 19 more years, meaning you can delay the DST installment payments over that time. The wealth created by a multi-decade DST is so substantial it's hard to speak of it in polite society — but, please let your financial imagination run wild.

DSTs offer unmatched power and flexibility to build wealth by deferring capital gains taxes for decades — provided you control and minimize DST trustee fees. Unlike other deferral strategies, a DST allows for a wide range of investments, from sitting in cash to exploring alternative investment opportunities.

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<sup>1</sup> The calculations and example variables are found in Appendix A.



This DST strategy is authorized by § 453 of the IRS code, with a long-standing history of approval by both the IRS and the courts.

**HOW IT WORKS:** First, you transfer your business to the DST. The DST then sells the business to the third-party buyer. You receive the sale proceeds through an installment plan over your expected lifespan, as outlined in the DST contract, along with legally required interest.

The sale proceeds, including the deferred taxes, are reinvested within the DST, creating decades of tax-free, compounded growth for your beneficiaries—growth that would be lost if capital gains taxes were paid upfront.

These reinvested gains can remain within the DST indefinitely, if allowed by the laws governing your DST and its location, or they can be distributed to your beneficiaries according to the terms and timing you've set in the DST.

Although DSTs cannot be used for publicly traded stocks, bonds, or business inventories, they are available for the sale of businesses, real estate, and many other types of property.

DSTs can even be applied to short-term capital gains, such as those from cryptocurrency trades.

Capital gains taxes can be deferred for decades—up to your IRS-expected lifespan—while the reinvested, tax-deferred gains grow within the DST, harnessing the power of compounding, which Albert Einstein famously called “the eighth wonder of the world.”

If you pay the capital gains tax upfront in the year of the sale, you'll miss out on this tremendous opportunity for wealth growth. By paying the IRS immediately, many business sellers sacrifice the fortune they could have earned from decades of compounded returns on what would otherwise be IRS-bound money.

Non-grantor irrevocable trusts, which are recognized as independent tax-paying entities, are required for DSTs. These trusts must have a truly independent trustee, not closely related to the seller. We'll dive into the specifics of DST trustee requirements in Chapter 3.

A cottage industry has developed around DSTs with corporate trustees offering one-stop services that bundle trust attorneys, corporate trustees, and trust accountants.

These services typically charge a setup fee of 1.5% of sales proceeds, along with ongoing annual trustee fees of 1.5%. These fees apply not only to the capital gains you're trying to defer but also to the total sale proceeds and all future investment gains within the DST.

Essentially, you're paying real estate agent-level commissions to these corporate DST trustees year after year.

In the 10-year DST example above, corporate trustee fees would total nearly a quarter of a million dollars! If you're younger than 60 and your DST has a longer duration, you'll pay substantially more in trustee commissions under a standard corporate DST agreement.

There's a better way:

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***Don't Pay The Vig On All Your Annual Trust Balances -  
Pay Your Team By The Hour.***

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Instead of handing over control of the entire DST process to a corporate trustee, you can educate yourself on the detailed options and strategies laid out in this white paper. By doing so, you can significantly reduce costs by assembling your own expert team of trustee, trust attorney, and trust accountant. Rather than paying an annual flat 1.5% of your entire trust balance every year, you can hire your hand-selected trustee on an hourly basis, saving a substantial amount in the process.

At [OpesTrust.us](https://OpesTrust.us), we specialize in providing cost-effective, seller-selected DST trustees.

Once the DST is set up, the time a trustee typically spends managing it each year is minimal, which rarely justifies the excessive annual fees charged by corporate DST trustees. In fact, over time, corporate trustee fees can completely negate the benefits of deferring capital gains taxes through a DST.

Industry-standard corporate DST trustees often restrict their services to clients with over \$1 million in sales because, for smaller transactions, their fees simply cannot make even arguable financial sense.

By educating yourself on how DSTs work and assembling your own team, compensated on an hourly basis, you can make DSTs financially viable for sales well under \$1 million—even for smaller transactions in the low five-figure range. If you have a trusted friend willing to serve as your DST trustee for free or in exchange for you serving as theirs, the savings can be even greater. More on this in Chapter 3.



A common sales pitch from corporate DST shops claims that their fees are "at no cost" to the seller, since they are paid out of DST reinvestment returns. This conveniently ignores the fact that without the DST, sellers would be investing those sale proceeds themselves. In most cases, corporate trustees consult with sellers on how to reinvest the funds, which is a standard feature of DSTs. Therefore, attributing investment gains to corporate trustees is misleading. The real question is who should benefit from the DST's returns — primarily the beneficiaries, not the trustees.

A DST that fails to reasonably limit trustee costs is directly at odds with the interests of the business seller and their DST beneficiaries. Over-compensating trustees dilutes the benefits that should primarily flow to the trust beneficiaries, not the corporate trustee shop.

It's your gain and your trust. Corporate DST trustees should not be competing with your beneficiaries for the lion's share of the DST's profits. Paying them more than a reasonable hourly rate undermines the purpose of using a DST, making it barely viable, if at all, even for seven-figure deals.

Let's be honest: DST corporate trustees are not chosen for their investment expertise. You already know how to make money, or there wouldn't be capital gains to protect. Unless the trustee is delivering exceptional returns through active investment management, their role in the ongoing management of the DST is minimal. When you consider that many DSTs require consultation with the seller about reinvestment decisions (as they should), paying 1.5% annually on the entire sale proceeds plus the gains is excessive.

If you need to outsource investment decisions, you're better off paying a top hedge or mutual fund manager for superior returns at the same or even lower cost. Corporate trustees simply aren't investment wizards, nor will they ever be.

The DST corporate trustee industry has a vested interest in making DSTs appear more complex and intimidating than they really are, using fear and confusion as marketing tactics. In reality, DSTs are merely a legal structure that qualifies for capital gains tax deferment, acting as a middleman.

Setting up and managing a DST isn't much more complex than a living trust, which hundreds of thousands of people in the U.S. manage as their own trustees. While you can't serve as your own DST trustee, you can appoint someone who won't destroy the financial benefits by overcharging.

Meeting with your hourly-compensated trust attorney while already well-informed about the specific DST options you want will streamline the entire process of forming your DST.

By educating yourself on DST strategies and assembling your own team—paid by the hour—you can make DSTs not only highly profitable for sales over \$1 million but also financially viable for smaller transactions.

Taking control of your DST costs by mastering its principles and selecting your own hourly-paid professionals can dramatically reduce the typical 1.5% annual fee—potentially cutting it down by a factor of ten. This reduction will lead to significant additional compounded returns for your beneficiaries over time.

If you have a trusted, qualified individual who can serve as your DST trustee for little or no compensation (perhaps in a quid pro quo arrangement where you serve as their trustee, as discussed in Chapter 3), even a low five-figure capital gain can benefit from DST deferral. This is especially true if the DST is structured to economically handle other smaller investment transactions throughout your life.

Get access to the most economical DST services available. Join the [Commission-Free Deferred Sales Trust | SEMINAR](#). Seminar members get access to training for lay trustees, and get access to a list of qualified DST trustees and protectors available to work by the hour and not the vig.

Membership limited to 24 per Seminar. Reserve your place. [Sign up here](#). Get prepared now. Don't wait until you're about to sell your business and find yourself holding the bag.

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If you have any constructive comments about this work, drop me a line at [michael@OpesTrust.us](mailto:michael@OpesTrust.us).

And if you are kindly inclined to leave a highly recommended review of this [HERE](#), I would be very grateful.



### **iii | about me**

I earned my law degree from the University of San Francisco School of Law and later transitioned into real estate development, where I built a national reputation in real estate investment, development, law, and litigation over the decades.

In addition to my professional pursuits, I'm a passionate winemaking enthusiast and have crafted delicious Cabernet Sauvignon wines from a friend's vineyard in Napa Valley. I'm blessed to be married to the most beautiful and intelligent woman, a successful hospitality executive in San Francisco. Together, we enjoy spending time with our four grown sons, all based in the Pacific Northwest, while living in the vibrant North Beach neighborhood, San Francisco's own Little Italy.

### **disclaimer - it's a white paper, not an attorney or CPA**

This white paper is not intended to replace consultations with attorneys or CPAs who specialize in using trusts for installment sales under IRS Code § 453.

Instead, its purpose is to educate you on the wealth-building potential of Deferred Trusts (DSTs) so you won't need to pay your experts to provide an in-depth tutorial. By understanding these strategies in advance, you'll be better equipped to make informed decisions and fully harness their powerful potential. This knowledge will also prevent you from being left in the dark, unlike many inexperienced business sellers who rely entirely on DST experts and miss out on maximizing their own financial benefits.

Please note, I am not your attorney. This white paper is for educational purposes only, and I am not responsible for any decisions you make regarding DSTs or their suitability to your circumstances. It is strongly recommended that you consult an attorney or CPA with expertise in these strategies before making any decisions or taking actions related to a DST.

### **dedication**

Heidi—everything about this life, our boys, and the work I do is made more magical because of you. After 25 years of marriage, my love for you grows stronger each year. You are the greatest blessing of my life.

## one | demystifying deferred trusts



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### Basics

When done right, a DST is how ecstatic business sellers spell "DMT."

You can defer capital gains taxes for decades on a range of investments—not just from the sale of your business, but also real estate, cryptocurrency, intellectual property, and more. This applies not only to long-term capital gains but also to short-term gains.

IRS Code § 453 allows for the deferral of capital gains by paying the seller in installments instead of a lump sum. Makes sense, right? Why pay taxes on money you haven't received yet?

When you pair this with a non-grantor, irrevocable, independent trust as the middleman, the strategy truly excels. The seller transfers the property to the DST in exchange for a promissory note with interest. Then, the DST sells the business to a third-party buyer and reinvests the tax-deferred proceeds, including the deferred capital gains taxes, without limitation.

There's no tax when the DST sells to the third-party buyer, because the selling price matches the DST's cost basis. After decades of tax-free reinvestment compounding—up to the seller's IRS life expectancy—the seller receives the sales proceeds plus interest, and the DST beneficiaries enjoy a massive fortune. This wealth comes not only from the tax-free sales proceeds but also from the compounded returns on the deferred tax itself.



**a) even better than using other people's money—using your IRS tax money!**

The DST trust strategy is straightforward and not new, though it's not widely known due to financial firms' incentives to keep seller-appointed trustee DSTs in the dark.

To qualify as an arm's length transaction, the DST must pay interest to the seller at the IRS-published rate for the installment term. Capital gains taxes are paid proportionally with each installment payment based on the ratio of your gain to the business purchase price.

The advantage lies in delaying the DST's installment payments for as long as possible, maximizing the benefits of compounded reinvestment of your capital gains tax. Sellers can delay payments until the end of their life expectancy, provided there are at least two payments.

Previously, capital gains were taxed only after the entire principal was repaid at the end of the installment term. However, the law now requires capital gains to be taxed on a pro rata basis each year. For example, if you sold a \$1 million business with a \$500,000 capital gain (50% cost basis) and took annual installments from the DST for 10 years, each annual installment would be \$100,000 plus interest (excluding depreciation clawbacks for simplicity). Each year, your capital gains are taxed in proportion to the total sales proceeds—in this case, 50%.

Thus, for each \$100,000 installment, half represents the return of non-taxable principal, while the other half represents taxable capital gains, which you will pay according to your applicable capital gains tax rate.

**b) an independent trustee and beneficiaries are required.**

To utilize DSTs, the business seller cannot be a beneficiary of the DST. Instead, the seller receives a promissory note with interest for the market value of business. Typically, the DST beneficiaries are the seller's spouse and children, who benefit from the compounded returns on the proceeds, including the deferred capital gains tax.

If the business is jointly owned by a married couple and you wish to make one spouse a DST beneficiary, you must transfer the business interest from the soon-to-be DST beneficiary spouse to the non-beneficiary spouse. This avoids violating laws that prevent the seller from being a DST beneficiary.

Additionally, the business seller cannot serve as a DST trustee, as this would be considered selling to oneself, which the IRS does not recognize as a qualifying transaction. The DST trustee must be independent and not "related" to you (details on this to follow). Trusted friends or in-laws are excellent options for DST trustees. Even if you don't have a willing friend or in-law, hiring a professional on an hourly basis will still result in massive savings.

**c) avoid eroding DST benefits with high DST corporate trustee fees**



The traditional drawbacks of DSTs have often been the high fees charged by corporate trustee firms, which bundle attorney, trustee, and CPA services. Standard corporate trustees typically charge 1.5% of the entire DST balance each year—covering the trust principal, capital gains from the sale, and any gains the DST accumulates over its lifetime.

While trustee duties after the first year are generally minimal, the 1.5% annual fee can quickly erode the benefits of a DST. Over time, these fees can surpass the advantages of the DST, and the opportunity costs and lost compounding due to excessive fees can significantly impact the wealth accumulated in the DST.<sup>2</sup>

You can sidestep this "private tax" on your DST's ROI by assembling your own team of hourly compensated professionals, including a trustee, trust attorney, and CPA—a process outlined in detail in Chapter 3. This is the smartest financial move and the only way smaller capital gains can truly benefit from a DST.

There's no minimum sale amount required to qualify for installment method deferrals under IRS Code § 453, but DST firms typically won't handle business sales under \$1 million because the fees wouldn't be enough to arguably justify their annual cut.

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<sup>2</sup> See, [How To Minimize Investment Fees](#), (May 2023) *Forbes Magazine*, for a closer look at the cumulative havoc a 1% annual fee does to investments. There's a whole investment cult out there that will only invest in low-to-no load (fee) funds because of the massive impact these fees have on compounding total return.

The difference between the hourly costs of your hand picked team and the yearly fees charged by DST firms is substantial. Over the life of the DST, those firm fees can quickly become detached from reality and severely impact your wealth.

By taking control of DST expenses, sellers can fully enjoy the benefits of deferred capital gains without unnecessary financial burdens. It's a way to truly have your cake and eat it too.

### **For How Long Can Deferral Last?**

Short answer: At least two installments, spanning at least two fiscal tax years, and within your IRS-published life expectancy.

Federal tax courts have determined that the term "installment" under § 453 does not include interest-only payments or a single lump sum. To qualify for installment sale treatment, there must be two or more payments that are explicitly and unconditionally required.<sup>3</sup>

The installment term cannot exceed the seller's life expectancy. Otherwise, the arrangement will be classified as a private annuity under IRS Code § 72 rather than a capital gain deferral under IRS Code § 453, leading to the loss of deferred capital gains tax benefits.<sup>4</sup>

Capital gains from private annuities are taxed as ordinary income, so it's crucial to adhere to installment sale criteria. This not only defers capital gains taxes but also limits taxes on pro rata paid gains to the lower capital gains tax rate.<sup>5</sup>

The DST and seller can agree to end installment payments upon the seller's death, thereby avoiding taxes on the remaining installment balance. As long as the installment note term is within the seller's IRS life expectancy, including a clause that terminates the note at the seller's death will keep the note balance within the DST and remove it from the seller's estate, potentially saving on the seller's estate taxes.<sup>6</sup>

Unfortunately, some professional DST websites incorrectly advise that interest-only payments, lump-sum payments, or indefinite deferrals qualify under IRS Code § 453 installment sale deferrals. These claims can serve as red flags to avoid such so-called "experts."

Legally, the maximum deferral of capital gains payments under IRS Code § 453's installment method is two payments made in two separate years no later than the final month of your life, according to IRS life expectancy tables.<sup>7</sup>

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<sup>3</sup> [Estate of Meredith v. Commissioner](#) (1981) US Tax Court; *accord*, [10-42 Corp. v. Commissioner](#), (1971) 55 T.C. 593, [Baltimore Baseball Club v. United States](#), (1973) 481 F.2d 1283; [McCutcheon & Co. v. Commissioner](#) (1934) 30 B.T.A. 1177; [Pendergast v. Commissioner](#) (1931) 22 B.T.A. 1259; Treas. Reg. 1.453-2(b)(1).

<sup>4</sup> IRS General Counsel Memorandum To: Charles M. Morgan III, (1986) GCM 39503. [Estate of Costanza v. Commissioner](#), 320 F.3d 595 (6th Cir. 2003).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> [Fidelity.com/building-savings/learn-about-iras/irs-single-life-expectancy-table](https://www.fidelity.com/building-savings/learn-about-iras/irs-single-life-expectancy-table)

## Ways Sellers Can Benefit

Although a business seller cannot serve as the DST grantor, trustee, or beneficiary, they can still have arm's length interests and benefits that do not qualify them as a trust beneficiary.

### a) the installment note

The primary benefit for the seller is the installment note received from the DST in exchange for transferring the property at market value.

Schemes that allow the seller early access to installment payments are illegal. If discovered by the IRS, such schemes can cause the trust to be deemed a sham, resulting in the loss of DST tax deferral benefits, along with potential interest and penalties.

These illegal schemes include monetizing the installment note through the DST or a third party. Using the installment note as collateral for early access to deferred gains is prohibited. The IRS highlighted such schemes as one of the top ["Dirty Dozen Tax Scams for 2022."](#)

Authorities have ruled that you cannot benefit from deferring your capital gains taxes while simultaneously using schemes to accelerate the installment payments without also accelerating the tax liability. Monetizing your installment agreement is strictly prohibited.

You cannot assign the installment stream for a lump sum payment without risking detection by the IRS, which would lead to the immediate acceleration of your capital gains tax liability, along with their associated penalties.<sup>8</sup>

What you can do is structure your installment payments alongside your other income to minimize or even avoid capital gains tax, or at least avoid the highest tax brackets, through strategic planning.

As of 2024, there is no capital gains tax if your taxable income is below \$94,051 (for married filing jointly). By carefully managing other income distributions, you may be able to stay within this threshold or at least avoid the highest tax bracket by strategically varying your income types each year.

For example, if you can manage the distribution of your other income to alternate years during your capital gains installment payments, you could potentially lower your tax exposure. By concentrating installment payments in years when you have reduced or no other income, and alternating between income sources, you may keep your taxable income within the lowest capital gains tax bracket, or even qualify for the zero bracket. Consult with your CPA to develop an income distribution strategy that maximizes your tax savings.

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<sup>8</sup> [taxslaw.com/2021/05/cash-in-hand-tax-deferral-monetized-installment-sales-no-you-cant-have-it-all/](https://taxslaw.com/2021/05/cash-in-hand-tax-deferral-monetized-installment-sales-no-you-cant-have-it-all/)

## **b) valid trust expenses**

The seller can play an active role in supporting the DST, provided that ultimate control and final decision-making authority remain with the independent DST trustee. The seller can serve as a paid consultant and perform other tasks as long as these do not imply ownership or interfere with the trustee's authority.

The seller may be reasonably compensated for various services provided to the DST, such as:

- Retainer for emergency services related to the DST and other family trusts
- Fees for investigating and consulting on DST reinvestments, including travel expenses
- Payment for any other work or consultations requested by the trustee

Additionally, there are other important and often overlooked trust deductions that could benefit from consideration, including:

- Depreciation on trust-owned vehicles (up to \$19,200 in 2022 if used by the trust for 50% or more of the time), in addition to car expenses or mileage
- Deductible personal payroll (if the trust employs the seller at arm's length) and 20% deductions on business profits under the Qualified Business Income (QBI) deduction (if applicable)
- Leasing the seller's residence to the trust at a meeting space rate for up to two weeks per year (Augusta Rule; IRS § 280A)
- Contributions to a SEP IRA or solo 401(k) up to \$60,000
- Cost segregation studies to accelerate or concentrate any real estate bonus depreciation

Discuss these deductions with your trust CPA to maximize your tax savings and reduce or eliminate trust income taxes.

Some CPAs also suggest that compensation could take the form of paid expenses (such as auto payments, travel, and food), which might offer tax advantages for the seller. DSTs, like other trusts or businesses, file taxes where income, capital gains, and deductions are accounted for to offset any trust income.

Business expenses can be creatively managed while staying within legal boundaries, as detailed by Jeff A. Schnepper in [How To Pay Zero Taxes](#) (37th Ed., 2020). Strategies can include leasebacks, compensating family members for their work, and other miscellaneous trust benefits. However, it's wise to consult with your attorney and CPA before implementing any unconventional strategies.

The DST formation documents should explicitly state that the trustee must consult with the seller regarding trust investments and beneficiary distributions. This consultation should be

clearly outlined, ensuring that ultimate control and authority over the trust remain with the trustee.

### **c ) loans to the seller and business associates**

A reliable method for withdrawing funds from a non-grantor irrevocable trust to a seller is by arranging legitimate arm's length loans.<sup>9</sup> Loans must be conducted with appropriate security, interest, and other reasonable terms. This means that interest-only loans, long-term loans, or roll-over loans (where terms are renegotiated upon maturity) are all permissible, provided they meet the requirements of being arm's length and include adequate consideration, interest, and collateral. In fact, your own DST might offer more favorable terms than a traditional bank!

### **d) partnerships with deferred trusts**

As a seller, you can certainly partner with the DST on investments. However, it's crucial to establish clear boundaries between partners, investment funds, and returns on investment (ROI). This should be formalized through written agreements and detailed documentation to ensure transparency and proper management.

### **e) beneficiary distributions with conditions**

Distributions to beneficiaries can be structured to benefit all parties involved. For example, a distribution could be made to a beneficiary who agrees to invest the proceeds in high-quality whole life insurance policies. These policies would name the DST (or another family or business trust) as the beneficiary, facilitating liquidity, doubling investment potential, and fostering exponential intergenerational wealth, as detailed in Chapter 5.

This strategy can help minimize income tax liability by shifting DST income to willing beneficiaries, while the DST gains access to affordable, guaranteed borrowing from these insurance policies. The substantial benefits of whole life insurance death benefits will not only replenish the trust but also expand it, creating a cycle of growing generational wealth.

### **Not Applicable for Amounts Exceeding \$5 Million**

If the business sale exceeds \$5 million, the seller must pay interest to the IRS on the portion of the capital gains tax that remains undistributed until the installment balance falls below \$5 million.<sup>10</sup> Some online sources suggest that private annuities under IRS Code § 72 could be an alternative. However, this strategy was effectively prohibited by a 2006 US Treasury regulation.<sup>11</sup>

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<sup>9</sup> [Loans From An Irrevocable Trust: How To Do Them Right](#), (December, 2021) Shenkman, Martin, ESQ., Forbes.com

<sup>10</sup> [The Tax Advisor](#); [irs.gov/pub/irs-utl/interest-on-deferred-tax-liability.pdf](https://www.irs.gov/pub/irs-utl/interest-on-deferred-tax-liability.pdf)

<sup>11</sup> [Proposed Treas. Reg. Sec. 141901-05](#), 2006 IRB 47; [irs.gov/irb/2006-47\\_IRB#REG-141901-05](https://www.irs.gov/irb/2006-47_IRB#REG-141901-05)



However, the \$5 million threshold applies to each individual separately. A married couple can each utilize their own \$5 million cap before the IRS begins to charge interest on any deferred tax amounts exceeding this limit.<sup>12</sup> Since each seller cannot be their own DST beneficiary, couples may need to establish two separate DSTs with alternating beneficiaries. This setup allows for an additional \$5 million in deferred taxes, which can be worthwhile despite the added complexity.

As detailed in Chapter 4, you can structure a DST to handle proceeds exceeding \$5 million as a low-interest loan, or explore other tax-advantaged strategies for the excess amount. Alternatively, you can use the DST for the first \$5 million and handle the remaining proceeds with a standard sale, paying capital gains taxes on that portion.

### **Endless DST Deferrals**

Capital gains generated from reinvesting sales proceeds within a DST cannot be deferred indefinitely by the original DST itself. The DST that made the gains cannot simply retain them and avoid taxes.

To continue deferring capital gains, you need to establish a new DST, which I refer to as a "child DST." The original DST sells its appreciated assets to this child DST. An additional independent trustee is appointed for the child DST, and the beneficiaries typically remain the same. If there are changes in beneficiaries, they must be approved in writing by the original DST's beneficiaries, as DST trustees have a fiduciary duty to act in the best financial interests of the beneficiaries.

Since DSTs are recognized legal entities, they can benefit from § 453 installment sales just like any other legal entity. This can be achieved by creating a child DST, with the child DST's grantor being any person or legal entity that is unrelated to the new independent trustee, such as a special purpose LLC.

Section 453 installment sale deferrals are not permitted for transactions between statutorily "related" parties. According to IRS Code §267(b)(4)-(8), certain relationships between trusts are prohibited, but the parent/child DST strategy described above are not statutorily related and, therefore, eligible for installment sale deferment.

Authorization for any child DST should be outlined in the founding documents of the original DST.

If you achieve similar success with the reinvestments in your new DST as you did with the original, you can potentially defer capital gains taxes indefinitely. Once a child DST is established, it can be beneficial to include smaller or short-term capital gains from the parent

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<sup>12</sup> [IRS Technical Advice Memorandum No. 9853002](#), 9/11/1998

DST into the child DST. This process requires only a simple written authorization from both the parent and child DSTs.

After completing one DST, setting up additional DSTs becomes significantly easier, especially when you have your own efficient and cost-effective DST team in place.

## **Common Misunderstandings**

There's a lot of misinformation circulating about DSTs, even on some professional DST corporate trustee websites.

Here are a few of the more common misunderstandings:

**MISUNDERSTANDING:** Business sellers can be named as direct beneficiaries in non-grantor irrevocable DSTs and benefit directly from both the installment payments of the original sale proceeds and the returns on the DST's reinvested funds. Some sites even refer to sellers as potential "beneficiaries" of the DST.

**FUN FACT:** This is fundamentally incorrect. The seller of the business transferred to the DST cannot be a DST beneficiary. Beneficiaries receive the value and gains from DST reinvestments, and sellers cannot benefit from these returns. The DST grantor, who must be an unrelated person or entity, designates the beneficiaries and manages how the DST reinvests and distributes funds. The seller, as an installment note holder, is considered a trust creditor, not a beneficiary.

**MISUNDERSTANDING:** DST business sellers can control DST proceeds, such as having co-signing authority on investments.

**FUN FACT:** They cannot. Any DST that allows grantors or sellers to maintain control over DST proceeds has been deemed a sham by the IRS and confirmed by courts, resulting in the loss of capital gains deferment benefits.<sup>13</sup> The trustee can seek the seller's input on DST investments and distributions, provided that the trustee retains ultimate control and authority. However, if the seller has any form of "insignia of ownership," such as the authority to sign DST checks, there is a risk that the DST could be deemed a "sham trust."

**MISUNDERSTANDING:** Professional DST corporate trustee services charging 1.5% annually of all DST balances are economical, as these fees are paid from the DST's reinvestment returns and interest.

**FUN FACT:** This overlooks the opportunity cost of reinvesting the original sales proceeds without incurring high fees. It also fails to consider the true interests of the DST beneficiaries.

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<sup>13</sup> [Section 453: Installment Sales Involving Related Parties or Trusts](#), (Fall 1979) DePaul Law Review, Vol.29, Issue 1.

The cost of these annual fees can quickly surpass the cost of paying capital gains tax and having the seller manage their investments directly. For a more cost-effective approach, consider assembling your own DST team paid by the hour rather than relying on an annual percentage, transforming your DST into a more efficient and multi-generational wealth-building tool.

**MISUNDERSTANDING:** Some well-regarded corporate trustee firms claim that non-grantor irrevocable trusts can avoid capital gains tax by allocating gains to the trust's corpus, referencing IRS Code § 643(a)(3).

**FUN FACT:** This is fundamentally incorrect. Section 643(a)(3) states that “gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus.” However, this applies only to Distributable Net Income (DNI), which is income allocated to beneficiaries and taxed to them. The trust itself remains liable for retained capital gains taxes that are not distributed to beneficiaries. Misinterpreting DNI with trust capital gains tax liability is a serious and dangerous error.<sup>14</sup> The legal trust community is unanimous in agreeing that while trust capital gains allocated to corpus are excluded from Distributable Net Income (DNI) and thus do not directly impact beneficiary tax obligations, they still result in a capital gains tax obligation for the trust itself.<sup>15</sup>

Significant capital gains within a trust that you wish to defer should be transferred to a child DST, as discussed earlier.

**MISUNDERSTANDING:** Some sources mistakenly claim that capital gains can be deferred indefinitely.

**FUN FACT:** The installment sale exception under IRS Code § 453 allows for deferral of capital gains taxes only if there are actual installment payments. Interest-only payments do not qualify as installments. While § 453 does not specify the exact terms, the IRS and courts have confirmed that valid installment sales must include at least two payments over two separate tax years and adhere to the seller's IRS life expectancy tables.<sup>16</sup> Exceeding that threshold risks serious consequences.

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<sup>14</sup> See, [IRS, Code § 1.643\(a\)\(3\)](#) example 1 where trust allocation of capital gains to corpus resulted in trust capital gains tax obligation.

<sup>15</sup> “Capital gains are not considered income to such an irrevocable trust. Instead, any capital gains are treated as contributions to principal. Therefore, when a trust sells an asset and realizes a gain, and the gain is not distributed to beneficiaries, the trust pays capital gains taxes.”

[simscampbell.law/how-are-capital-gains-in-irrevocable-trust-taxed/](#); *accord*, [journalofaccountancy.com/issues/2014/apr/trusts-estate-planning-20138750.html](#), [legacycarelaw.com/blog/trust-administration/do-irrevocable-trusts-pay-capital-gains-taxes/](#), [26 CFR, § 1.643\(a\)-3](#).

<sup>16</sup> See, footnotes 3 and 4, *supra*

## **Not a Delaware Statutory Trust (a different DST)**

Section 453 Deferred Trusts (DSTs), also known as Deferred Sales Trusts (DSTs), are often confused with a different tax deferral strategy: the Delaware Statutory Trust (DST). The Delaware Statutory Trust is a vehicle for 1031 like-kind exchanges for qualified investors, while Section 453 DSTs serve a different purpose. Chapter 4 provides a detailed comparison of the two DSTs.

There are over 400 private IRS rulings (including 74 specifically about trusts), 136 US Treasury decisions, IRS guidance, 83 court cases, and 11 regulations concerning § 453 tax-deferred installment sales. I've reviewed and analyzed all these resources so you don't have to.

Despite the complexity suggested by some DST trustee financial firms, DSTs are not as complicated as they may seem. Many investors manage their own living trusts, and appointing an independent trustee for a DST is similarly straightforward. The financial benefits can be substantial.

Most challenges arise from misunderstandings or overreach by grantors. This white paper aims to provide a clear, non-legalistic guide on effectively setting up and managing your DST to legally minimize capital gains exposure and maximize the benefits for DST beneficiaries.

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## two | own nothing



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The phrase "Own nothing, control everything" is a well-known trust principle. Trusts are a powerful tool for reducing taxes and limiting personal liability while retaining control over assets placed in trust. As governments and litigious societies increasingly encroach on private property rights, savvy wealth builders have long used trusts to protect their assets—a practice that dates back to ancient times.

Trusts offer freedoms and benefits that governments have made difficult for individuals to achieve in their personal legal capacity. While beyond the specific scope of Deferred Trusts (DSTs), common law business and family trusts, in general, provide families with flexibility regarding taxes, inheritances, privacy, and asset protection—advantages not easily available to individuals. Incorporating a variety of legally recognized entities into your wealth strategy can help you achieve financial goals that are often beyond the reach of the general investing public.

At their core, trusts are simple to understand: they are contracts that divide property ownership into two roles—those who control the property (trustees) and those who benefit from it (beneficiaries). The trust agreement places assets under the management of trustees for the benefit of one or more beneficiaries. That's the basic structure. While legal jargon, such as "corpus" or "res" (Latin for trust property), and terms like "grantor" or "settlor" (meaning trust creator), may complicate things, this complexity often serves to make clients feel dependent on legal professionals. A confused client is easier to exploit.

## Protecting The Citizenry Against Government Overreach Since Antiquity

### a) a strategy against government abuse

Trusts have a long history, dating back to the time of the Egyptian pharaohs.<sup>17</sup> The Bible even references a form of trust when Esau sold his birthright to Jacob.<sup>18</sup> Plato used a trust to establish his university in Greece in 400 B.C., and in ancient Rome, citizens employed *fidei-commissum* trusts to bypass laws that prevented them from leaving their inheritance to non-Roman citizens.<sup>19 20</sup>

Think the U.S. federal government can be oppressive? Consider the medieval British monarchies. When knights left for the Crusades, kings would often seize their unprotected estates to fund royal military campaigns. In response, knights began creating trusts, appointing the Church as trustee to prevent royal confiscation. The foundation of modern trust law was developed by the Royal Courts of Chancery during this period.<sup>21</sup>



When English colonial immigrants arrived in America, they faced burdensome regulations requiring a corporate charter—an act of English Parliament—just to buy and develop land. To bypass these state-imposed controls, our ancestors devised the "Massachusetts Trust," using

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<sup>17</sup> [The Art of Passing The Buck](#), Arthur, Charles (2007), p.33.

<sup>18</sup> [Genesis](#), 25:29-33.

<sup>19</sup> *Ibid.*, Arthur.

<sup>20</sup> [The Law of Trust and Trustees](#), Bogert, George Gleason, (1984) p. 15.

<sup>21</sup> *Id.*, Arthur, p. 34.



common law to pool resources and avoid the restrictive oversight. This innovation helped pave the way for modern trust practices.<sup>22</sup>

### **b) constitutional right of common law trusts**

Some of the revolutionary-era Massachusetts trusts still exist today, serving as part of the legal foundation for common law trusts, which operate independently of government-created statutory trusts.<sup>23</sup>

Private trust agreements were so essential to the colonists, who were wary of government overreach, that the U.S. Constitution enshrined the right to common law trusts in Article 1, Section 10, Clause 1, which states, “No State shall... pass any... Law impairing the Obligation of Contracts.”

Although courts have placed limits on private contracts, these restrictions are generally aimed at protecting public health and welfare. Statutory trusts may impose some limitations on common law trusts, but they do not replace them. For example, Nevada Revised Statute 163.4167 explicitly upholds common law trust principles alongside statutory trust laws:

“Common law. The provisions of NRS 163.414 to 163.419, inclusive, do not abrogate or limit any principle or rule of the common law, unless the common law principle or rule is inconsistent with the provisions of NRS 163.414 to 163.419...”

Common law trusts remain the most flexible and least regulated type of trust, offering broader powers compared to their statutory counterparts. The right to create enforceable common law trust agreements remains a constitutionally protected and judicially validated option, making it a strategically preferable choice.<sup>24</sup>

## **DST Parties**

There are at least three parties to a trust: 1) the grantor(s); 2) the trustee(s), and the beneficiary(ies). Some have a fourth - the protector.

### **a.) grantor**

The grantor may also be referred to as the:

- Settlor
- Trustor
- Trust Creator

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<sup>22</sup> *Id.*, Arthur, p.35.

<sup>23</sup> *Ibid.*

<sup>24</sup> Statutory Versus Common-Law Trusts: Understanding The Difference, (May 2021) [Forbes Magazine](#)

- Donor
- Founder

These terms are synonyms for the person who establishes the trust, contributes property to it, and defines its structure and administration through the trust agreement.

The property transferred to the trust by the grantor can be called:

- Corpus
- Res
- Capital
- Principal
- Estate
- Property

These are alternative terms for the assets originally placed into the trust by the grantor.

In § 453 installment sales, which allow for deferral of capital gains tax up to the seller's IRS-recognized lifespan, the transaction between the seller and the DST must involve unrelated parties. A grantor and trustee of the same trust are considered related.<sup>25</sup> The grantor can be an individual who is not statutorily related to the proposed DST trustee, or an unrelated business entity, such as another trust, LLC, S corporation, or C corporation. For instance, an LLC established solely for the purpose of serving as the DST grantor and unrelated to the seller will work.

The unrelated grantor may establish the trust with a nominal \$100 contribution. Once the trust is set up, it operates independently and can proceed to acquire the business from the seller at market value.

## **b) trustee**

The trustee receives the trust property from the trust creator and manages it according to the terms of the trust agreement, acting as a fiduciary for the beneficiaries. Trustees have a fiduciary duty, which entails a legal obligation to act with loyalty and care on behalf of the beneficiaries.

In some trusts, such as living trusts, the grantor may also serve as the trustee. However, this does not apply to DSTs. DSTs must have an independent trustee. Further details on this requirement will be discussed later in this chapter.

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<sup>25</sup> IRS Code, §267(b)(5)

### **c) beneficiaries**

Beneficiaries are entitled to receive the earnings and property of the DST according to the trust's terms. While in some trusts the grantor or trustee may also be a beneficiary, this is not permitted in a DST. Under § 453 installment sales that defer capital gains tax, the seller cannot be a beneficiary. Instead, the seller is considered a trust creditor, and designating the seller as a beneficiary would invalidate the tax deferral. A family trust can be a beneficiary of a DST, provided that the family trust excludes the original seller from being a beneficiary. Families can establish multiple trusts to meet various legal requirements and implement different strategies.

### **d) protector**

Often overlooked but highly valuable for significant DSTs is the role of a protector, who safeguards against a wayward trustee—whether the trustee is refusing reasonable investment advice from the seller, incurring excessive expenses, or engaging in fraud.

A protector can be given the authority to:

- Veto any objectionable decisions made by the trustee
- Replace a trustee who has lost the protector's confidence
- Alter the terms and beneficiaries of the trust if necessary.<sup>26</sup>

The DST must carefully balance the powers of the protector and the trustee to avoid the risk of having a rogue protector without a reasonable remedy, other than potentially costly court litigation. The role of a trust protector is recognized in the Uniform Trust Code, which has been adopted by 31 states and the District of Columbia.<sup>27</sup>

A protector should only intervene if there is a serious issue with trustee decision-making. They serve as an emergency measure for dealing with an out-of-control trustee, ideally never needing to act.

Protectors are not commonly appointed in trusts. You should weigh the hassle and cost of appointing a protector against the size of the trust and your overall net worth to determine if this preventive measure is warranted.

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<sup>26</sup> [\*The Complete Book Of Wills, Estates & Trusts\*](#) (4th Ed. 2021) Bove, Jr., Alexander A., Esq., et al., p. 259-261.

<sup>27</sup> [mattersoftrustlaw.com/2016/03/uniform-trust-code-will-impact-blog/](https://mattersoftrustlaw.com/2016/03/uniform-trust-code-will-impact-blog/)

## Authority of the Parties

### a) grantor

The grantor is essentially the architect of the trust, designing it to meet their strategic objectives. They create, fund, and structure the trust according to their intentions. For DSTs the grantor relinquishes control once the trust is established, allowing it to operate independently under the management of the appointed trustees.

In contrast, with revocable trusts, such as many living trusts, the grantor can serve as the trustee and retain control over the trust's administration. However, if a DST grantor retains control or exhibits signs of ownership, the IRS and courts will view the trust as a sham, which could invalidate any tax deferral benefits.<sup>28</sup>

As noted earlier, IRS Code §267(b)(4) stipulates that the seller cannot serve as the grantor of a DST because the grantor and trustee are deemed legally related. To comply, the grantor of a DST must be someone who is not statutorily related to the trustee, such as an independent individual, a separate trust, or a business entity.

### b) trustee

The level of control a trustee has over a trust can vary significantly based on the powers granted by the trust's creator. These powers can range from extensive to limited, depending on the terms of the trust, and may include authority to:

- Choose types of investments
- Allocate investments
- Distribute trust income
- Distribute the trust's principal
- Hire professionals
- Consult experts
- Decide when to terminate or transfer the trust (decanting)
- And other responsibilities not listed here

Trust income retained within the trust is often taxed at a higher rate compared to income distributed to beneficiaries. Therefore, most trusts allocate income to beneficiaries who might have lower tax rates, usually with the guidance of their CPA.

It is crucial for the trustee to have the power to decant the trust, meaning to transfer assets into a new trust and dissolve the original one. This flexibility helps address unforeseen issues that could otherwise undermine the trust's purpose. This process allows for corrections of unintended consequences, even for "irrevocable" trusts established by the grantor.

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<sup>28</sup> [okbar.org/barjournal/feb2019/obj9002hallman/](https://okbar.org/barjournal/feb2019/obj9002hallman/)

Finding the right balance between granting the trustee sufficient authority and imposing necessary limitations is key. Excessive restrictions may hinder the trustee from achieving the trust's objectives as circumstances, laws, and regulations evolve.

A trust, functioning as a type of "family constitution," must balance general and specific provisions, as well as the trustee's powers and limitations, to ensure long-term success. This balance is best achieved by focusing on the trust's overarching goals with general language, rather than prescribing overly detailed methods wherever possible.

### **c) beneficiaries**



The primary role of beneficiaries is to receive trust income and principal as specified by the trust and managed by the trustee. However, beneficiaries may also have a more active role in certain situations, such as when selecting or appointing a new trustee or protector, or when the trust document requires their input on investments and other critical decisions.

It is important to consider the psychological and developmental impact when structuring a trust. Significant wealth should be transferred in a manner that supports beneficiaries without creating dependency or hindering their personal growth. This issue is explored in greater detail in Chapter 6, which addresses the concept of entitlement.

#### **d) protector**

Since the protector has the authority to replace the trustee, an unchecked or irresponsible protector can pose a risk to the trust's administration, potentially as significant as or even greater than that posed by a rogue trustee.

The role of the protector is crucial as a safeguard against trustees who act contrary to the trust's interests or engage in illegal activities. Just as a Deferred Trust (DST) must carefully balance the powers and restrictions placed on the trustee, it must also carefully define the powers of the protector in relation to the trustee.

The powers of the trust protector are defined entirely by the DST agreement. If issues such as fraud, negligence, or gross mismanagement by the trustee occur, the protector may have the authority to veto trustee actions. They might also have co-signing authority over trust accounts, requiring their approval for investments, transfers, and expenditures.<sup>29</sup>

A protector may have extensive powers, such as removing and replacing the trustee, altering beneficiaries, or even modifying the trust's terms. These powers can offer flexibility for managing an "irrevocable" trust. However, granting too much authority to the protector can create an imbalanced and problematic situation.<sup>30</sup>

Allocating powers to the protector requires careful consideration. A balanced approach might involve granting the protector veto authority over trustee decisions while avoiding proactive mandates. Additionally, giving the protector the power to remove a trustee, but allowing beneficiaries to appoint a replacement, can help maintain a fair balance of power.

It may also be wise to grant both the beneficiaries and the trustee unanimous authority to remove the protector. This ensures the protector remains accountable and prevents them from undermining the trust's objectives.

Although the protector may have the power to decant the trust—transferring assets into a new trust with updated terms—it's generally advisable to keep this power with the trustee. The trustee should decant only with the protector's implicit approval, as the protector can veto but not initiate decanting.

This structure mirrors the separation of powers found in the U.S. Constitution, providing checks and balances to prevent abuses of fiduciary power and avoiding costly and time-consuming court interventions.

#### **Common Types Of Trusts**

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*



A DST should be a common law trust, specifically a non-grantor, complex, irrevocable trust.

#### **a) common law or statutory law trusts?**

Statutory trusts are created through legislative processes and are governed by specific statutory regulations. These regulations may mandate actions such as public registration with the Secretary of State, which can compromise privacy. Additionally, statutory rules often impose restrictions on the operational flexibility of these trusts.

In contrast, common law trusts are based on legal precedents established over centuries. Common law, developed through judicial decisions, recognizes agreements between private parties and reflects historical business practices.

The degree of flexibility granted to trusts can vary depending on the state of formation, known as the trust's "situs." Common law trusts typically offer more freedom and privacy compared to statutory trusts, as they are generally not required to register publicly, thus preserving confidentiality and anonymity.<sup>31</sup> This legal flexibility offers a significant advantage in maintaining the trust's confidentiality from both governmental and private scrutiny.

To enhance autonomy and privacy, Deferred Trusts (DSTs) should be established as common law trusts whenever feasible.

#### **b) complex or simple trusts?**

A simple trust distributes all of its income to beneficiaries each year but does not disburse the trust's principal—the initial assets contributed by the grantor or any property acquired through trust investments. Additionally, simple trusts are not allowed to make charitable contributions.

Any trust that either retains income, distributes principal, or makes charitable contributions is classified as a complex trust.<sup>32</sup>

Deferred Trusts (DSTs) should be set up as complex trusts to allow for the flexibility needed to accumulate income and distribute principal when necessary.

#### **c) non-grantor or grantor trusts?**

"A grantor Trust is a Trust over which the grantor has retained certain interests or control. The grantor Trust rules in IRC 671-678 are anti-abuse rules. They prevent the grantor from taking tax advantages from assets that have not left his or her control. The anti-abuse rules treat the grantor as owner of all or a portion

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<sup>31</sup> (*Trusts: Common Law and IRC 501(c)(3) and 4947*, Thomas, Ward L. (2003) p.10, noting that some states require trust registration with some courts; cited as authority by IRS, at [irs.gov/pub/irstege/eotopica03.pdf](https://irs.gov/pub/irstege/eotopica03.pdf).)

<sup>32</sup> (*F. Trust Primer*, Lin, Easel, et al, p.3; cited with approval by IRS at [irs.gov/pub/irs-tege/eotopicf01.pdf](https://irs.gov/pub/irs-tege/eotopicf01.pdf).)

of the Trust. The grantor is subject to tax on Trust income so treated even if he or she does not actually receive the income.”<sup>33</sup>

Deferred Trusts (DSTs) must be established as non-grantor trusts, with an independent trustee who is separate from the grantor to ensure the trust's validity, enforceability, and defensibility during an IRS §453 audit. Some online sources, including certain professional DST service providers, incorrectly suggest that a DST can permit the grantor to retain direct control over the trust's funds and investments, such as having co-signing authority. This is misleading and risky, as court rulings have deemed such trusts illegitimate and considered them scam trusts.

#### **d) irrevocable or revocable trusts?**

“If the grantor retains the ability to revoke the trust and revest the trust assets in the grantor, the trust is revocable and the income is taxable to the grantor under the grantor trust rules.”<sup>34</sup>

Since Deferred Trusts (DSTs) are intended to prevent trust income from being attributed to the grantor, they must be established as irrevocable trusts. However, this does not mean that unforeseen issues cannot be addressed. The power of decanting—held by either the trustee or protector, as previously discussed—provides a mechanism for making adjustments to resolve significant unanticipated problems.

#### **e) common trusts types**

- Family Trust: Helps avoid probate, preserves privacy, safeguards wealth, and offers legal tax benefits.
- Living Trust: Designed to avoid probate.
- Charitable Trust: Provides tax advantages and facilitates tax-efficient charitable giving.
- Business Trust: Effective for privacy, legal tax minimization, and estate planning.
- Foreign Trust: Established in another country, often for tax and asset protection purposes.
- Asset Protection Trust: Ensures privacy and safeguards assets from potential claims.
- Spousal Lifetime Access Trust (SLAT): Allows for spousal access to trust assets.
- Special Purpose Trust: Created for specific, defined objectives.

*and many more.*

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<sup>33</sup> (*Ibid.*)

<sup>34</sup> (*Id.*, p.4.)

## Go Where Your Trust Is Treated Best - The Situs State

The trust situs refers to the jurisdiction where a trust is legally domiciled, which determines the state laws that will govern the trust. There is no requirement for the trust to be located in the same jurisdiction as the grantor, trustee, beneficiary, the location of trust property, or where investments are made.

Choosing the right trust situs is crucial for maximizing flexibility, tax advantages, asset protection, and privacy. The selection process should prioritize states that:

- Do not require licensed trustees, allowing for the use of more affordable private trustees.
- Do not tax trust income.
- Provide strong protections against creditors and litigation.
- Permit "decanting," offering the flexibility to transfer assets to a new trust to address unforeseen circumstances.<sup>35</sup>
- Maximize trust privacy.

South Dakota and Nevada are often cited as offering the best combination of tax benefits, asset protection, trust longevity, and flexible decanting provisions.

Other favorable states include<sup>36</sup>:

- Alaska
- Delaware
- New Hampshire
- Tennessee
- Wyoming

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<sup>35</sup> (*Best States For Trusts: How To Choose One That's 'Trust-Worthy'*, (October, 2022) [Kiplinger.com](https://www.kiplinger.com/trusts/best-states-for-trusts).)

<sup>36</sup> (*Ibid.*)

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### three | control everything



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Assembling your own personal DST team represents a superior level of wealth creation.

#### **The Devil Is in the Details**

Professional DST service fees can significantly erode the capital gains tax savings intended for the trust. Although a 1.5% annual fee may seem modest initially, it can substantially diminish trust fund balances and incur a high opportunity cost due to lost compounding growth.<sup>37</sup>

The difference between a corporate trustee charging 1.5% of trust balances year after year, and the hourly costs of a private DST team is mind-numbing.

For example, choosing a personal trustee compensated by the hour could lead to an additional compounded balance of \$412,400 (5x) at the end of a 10-year trust term, using the following variables detailed in this white paper:

- 10-year trust term (a life expectancy trust could last up to 19 years)
- 60-year-old seller
- Sale of a \$1 million property
- Two installment payments at the end of the trust term
- 50% cost basis (\$500,000 gain)
- Federal capital gains tax rate of 20%
- Historical real estate ROI of 10.6% on reinvestment
- Average state capital gains tax rate of 5.4%
- Annual private DST trustee fees of \$2,500

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<sup>37</sup> See, *How To Minimize Investment Fees*, (May 2023) [Forbes Magazine](#), for a closer look at the cumulative havoc a 1% fee does to investments.

Using these criteria would lead to the following varying DST balances:

	CORPORATE TRUSTEE	PERSONAL TRUSTEE
Seller installments (pre-tax)	\$1,085,725	\$1,085,725
DST fees	\$249,572	\$30,000
DST fortune	\$101,022	\$513,422
<small>* Pre-tax gain on deferred capital gains taxes only. Example variables: \$1 million sale, \$500,000 gain, average ROI &amp; capital gains tax rate</small>		<small>DSTkit.com</small>

Because corporate trustee fees are calculated as a percentage of the entire DST balance each year, the difference between a 1.5% annual fee and hourly compensation for a personal trustee becomes more pronounced over a longer trust term. By the 25th year, the cumulative fees for a corporate trustee could exceed the savings achieved through DST deferral benefits due to the compounding effect on the original sale proceeds, which are included in the fee calculation.

Regardless of the specific variables, opting for reasonable hourly compensation for trustees can lead to substantial savings compared to the fees charged by corporate trustees. The savings can ultimately far exceed the original capital gains by the end of the DST term.

The divergence in costs also grows exponentially when the percentage of capital gain transferred to the DST corpus is lower, for similar reasons.

In some cases, particularly where the DST involves long-term passive investments with minimal annual management, personal trustee fees may be minimal. Additionally, having a qualified trustee who charges no fees—such as a trusted friend, family member, or a mutually assured trustee—can further enhance the DST's financial benefits.

## Choosing Your Trustee

Choosing your trustee is crucial, as this individual will oversee the administration of your Deferred Trust (DST). Ideally, the trustee should be someone intelligent, trustworthy, and not a close family member who is disqualified from serving.

Trustees have a fiduciary duty to act in the best interests of the beneficiaries, a legal obligation that holds them accountable in court for any negligence or misconduct.

To attract or reassure a personal trustee, consider offering legal protections, such as indemnification and hold harmless clauses. These provisions can safeguard the trustee from liability, except in cases of criminal fraud.

### **a ) who is ineligible to serve as a DST trustee**

"It is imperative for capital gains tax deferral that the DST must be considered a bona fide, third-party trust with independent trustees."<sup>38</sup> Therefore, the following family members are ineligible to serve as a trustee of a DST, including the seller's:

- Current spouse
- Father
- Mother
- Ancestors
- Children
- Lineal descendants
- Siblings (full or half)<sup>39</sup>

Your spouse at the time of creating the DST, as well as anyone who becomes your spouse afterward, cannot serve as your DST trustee.<sup>40</sup> If you are legally separated or divorced before the creation of your DST, your ex may serve as your DST trustee—thanks to the IRS for that twist!<sup>41</sup>

The following individuals or entities also cannot serve as your DST trustee:

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<sup>38</sup> *Deferred Sales Trust - What's All The Hype?*, Hallman, Dawn D., [Oklahoma Bar Association](#) (February 2019.)

<sup>39</sup> (IRS Codes, [§ 453\(e\)\(1\)\(A\)](#), [§ 318\(a\)\(1\)\(A\)-\(B\)](#), [§ 672\(c\)\(2\)](#).)

<sup>40</sup> (*Id.*, (e)(1)(A)-(B).)

<sup>41</sup> (*Id.*, (e)(2).)



- The DST grantor
- Your employees
- A corporation owned or controlled 50% or more by the DST grantor
- A corporation or its employees in which the DST grantor or trust has significant holdings
- Trusts that have prohibited relationships with the DST seller or trustee.<sup>42</sup>

#### **b) who should serve as a DST trustee**

A trustworthy friend or in-law who is reasonably intelligent and can handle a few DST transactions and accounting documents each year is an ideal candidate for trustee. If your DST requires investment consultations with the seller, the trustee's role is mostly administrative and demands minimal time and attention.

The trustee must ensure that seller consultations do not unfairly benefit the seller at the expense of the DST beneficiaries. In such cases, if the trustee is negligent, the indemnification and hold harmless clause will protect them from liability. As long as the trustee retains formal control of the trust, everything remains in order.

Members of the [Commission-Free Deferred Sales Trust | SEMINAR](#) have access to trustee training and guidance, along with professional grantors, trustees, and protectors at reasonable rates. It's not overly complicated. Anyone who is not a disqualified related party can serve as trustee in states that do not require licensed trustees. Many people serve as trustees for their own living trusts, so you don't need to allocate the majority of DST benefits to corporate trustees—and in many cases, you shouldn't.

#### **c) mutually assured trustees**

Trustworthy mutually assured DST trustees will do.

In the 1960s and 1970s, the United States and the Soviet Union operated under a cold war policy of mutually assured destruction. The threat of retaliation ensured that neither side could initiate a nuclear attack without facing inevitable destruction—essentially a high-stakes Mexican standoff.

In a similar vein, if you lack a friend or qualified relative to serve as your trustee, you might find someone with a good reputation who will eventually need a trust of their own. Both of you can act as each other's trustee, creating a mutual assurance that each trustee will manage the trust with the highest level of ethics and care.

Additionally, there are statutory restrictions against selling property to a "related person" to qualify for §453 installment sale and gain tax deferment benefits up to \$5 million in sales

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<sup>42</sup> (*Id.*, (c)(2), § 267(b).)

proceeds. The law clearly defines which parties are considered related in the context of trusts.<sup>43</sup> Trustees of two trusts with a common grantor are considered statutorily related.<sup>44</sup> In mutually assured DSTs, each trust has its own separate and independent grantor, so the trustees are not considered statutorily related.

Using a cost-free trustee can result in substantial savings, as the DST's income, principal, and gains will compound without the burden of trustee fees.

Even if a personal trustee is compensated handsomely on an hourly basis, the savings from avoiding a 1.5% annual fee on the entire trust balance can be significant.

#### **d) when no one meets the requirements**

If all other options fail, [Commission-Free Deferred Sales Trust | SEMINAR](#) members can access a current list of reputable, skilled, and available DST grantors, trustees, and protectors in strategically advantageous states, all for a reasonable retainer and hourly fees.

Trust management can be lucrative when done right. If you're looking for a well-paying side gig and hold at least a bachelor's degree (preferably in finance or economics) with an impeccable reputation (no issues of moral turpitude), send your resume to michael@OpesTrust.us to be considered for trustee or protector opportunities

#### **e) seller trust transparency**

The seller can keep an eye on the DST without interfering with its operation. You are allowed to monitor trustee financial activities and view account details to ensure the trust is managed properly. However, while you can observe, you should avoid directly handling trust funds to prevent invalidating the trust.

To further safeguard your interests, appointing a trusted protector to oversee the trustee can be beneficial. This protector can have co-signing authority on trust account transactions, review and approve investments, transfers, and expenses, and even have the power to remove and replace a trustee if necessary. As the value of the DST's assets increases relative to your net worth, having a protector becomes increasingly prudent.

### **Selecting the Ideal DST Trust Attorney**

If you're a member of the § 453 Deferred Trust | SEMINAR, you have access to our specialized firm that offers commission-free DST services.

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<sup>43</sup> IRS Code, §267(b)(4)-(8)

<sup>44</sup> Id., (b)(5)

However, if the SEMINAR is fully booked, finding the right DST attorney becomes crucial. Trust law is a specialized field, and you don't want to pay high hourly rates for an attorney to get up to speed on common law DSTs—especially when you might already be more informed than your attorney.

Start by asking your family's attorney for a recommendation. If you don't have a family attorney, contact a local lawyer who doesn't specialize in trust law. Attorneys often know which of their colleagues are competent in fields outside their own practice. A poorly regarded trust attorney is unlikely to have a good reputation among their peers.

Ensure that your initial consultation with any attorney is free of charge. This way, if you're not satisfied with their approach, expertise, or fees, you won't incur unnecessary costs.

Be well-prepared before meeting with a DST professional. Understand your goals, identify your Trustee and beneficiaries, and outline the terms you need. Your DST team should either charge an hourly rate with a clear estimate or a flat fee for all services.

With thorough preparation, you'll streamline the process for your DST professionals and set up a financially advantageous DST. Once established, the DST should accommodate future investments without needing a new trust—just an added clause for future installment sales.

## **Selecting Your DST CPA**

You absolutely need a Certified Public Accountant (CPA) to handle the tax aspects of your Deferred Trust (DST). As non-grantor irrevocable trusts, DSTs are recognized by the IRS as independent taxable entities. Trust tax matters can be intricate, requiring specialized 1041 tax returns, and you'll need more than a general accountant without trust experience to ensure accurate trust accounting, tax deduction consulting, and tax preparation. Expert CPA services are essential.

Your trust attorney can be a valuable resource for recommending a qualified CPA. If your attorney and CPA have an established working relationship, it can streamline the process and help avoid potential conflicts.

For those who are members of the [Commission-Free Deferred Sales Trust | SEMINAR](#), you have access to a CPA experienced in trust taxes, as well as attorneys, trustees, and protectors in strategically advantageous states.

## **Choosing Your DST Protector**

The grantor cannot serve as a DST protector, as the protector must be independent from the grantor, much like the trustee. Furthermore, if a protector has removed a trustee, the grantor cannot legally retain the authority to appoint a new trustee. This restriction ensures that the

grantor does not retain any "indicia of ownership" or control over the trust, in compliance with the non-grantor irrevocable trust requirement.

Additionally, a DST beneficiary should not serve as the protector.<sup>45</sup> The DST is designed to protect trust assets from being misused by beneficiaries. To avoid incentivizing beneficiaries to appoint protectors who simply rubber-stamp their wishes, it's crucial to select a protector who will act independently and in the best interest of the trust.

While common law and US state laws do not impose restrictions on appointing a protector as they do on trustees, the protector's role is crucial and should be filled with equal care. A trusted friend or qualified family member (excluding close relatives) can be a good choice. Alternatively, a mutually assured protector, as described earlier, is also a viable option.

The grantor's DST trust attorney can be an excellent choice for a protector. Though employed to finalize the trust, an attorney can serve effectively in this additional role while maintaining the necessary independence from the grantor. Attorneys often have dual fiduciary responsibilities and are well-suited to understand and fulfill both roles.

Many DSTs do not include a protector. The decision to include one should be based on the value of the DST assets relative to the grantor's net worth and the potential cost of litigation if a trustee needs to be removed.

If needed, [Commission-Free Deferred Sales Trust | SEMINAR](#) members have access to our in-house protectors as part of our comprehensive trust follow-up and maintenance services.

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<sup>45</sup> (*Id.*, Alexander, p. 260.)

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## four | a superior strategy



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### Private Annuities No Longer Extend Capital Gains Deferral Beyond the \$5 Million Threshold

The IRS allows for the use of its funds for decades on Deferred Trust (DST) proceeds up to a \$5 million threshold without charging interest. However, for any sale proceeds exceeding this \$5 million limit, you'll need to pay interest on the deferred capital gains tax at the current published rate.<sup>46</sup>

Paying IRS interest on deferred capital gains tax for amounts over \$5 million can diminish the benefits of a Deferred Trust (DST), unless investors are confident they can achieve a higher return on investment (ROI) compared to the low IRS interest rates. If this is the case, it can be advantageous, effectively allowing investors to borrow from the IRS at rates lower than those available from banks.

For investors who find the IRS interest rate on deferred capital gains above \$5 million unappealing, there are alternative options: (1) consider other tax shelters, or (2) limit the installment payments to \$5 million and pay the capital gains taxes on any excess proceeds directly.

Some professional DST corporate trustee services and attorney sites incorrectly suggest that sellers can defer capital gains exceeding the \$5 million threshold without paying IRS interest by combining an installment sale with a private annuity under IRS Code § 72.

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<sup>46</sup> [irs.gov/applicable-federal-rates](https://www.irs.gov/applicable-federal-rates)

Before October 2006<sup>47</sup> sellers could transfer their property to a trust in exchange for a private annuity, deferring capital gains taxes for the lifetimes of both the seller and their spouse. However, this practice was halted with the introduction of proposed US Treasury Regulation 141901-05, which put an end to this long-standing deferral strategy.<sup>48</sup>

Although this Treasury regulation has not yet been finalized, the US Treasury's current interpretation of the law suggests that capital gains tax deferrals through private annuities are no longer permitted. Therefore, it is not advisable for taxpayers to rely on this strategy based on the regulation's "proposed" status:

“Temporary and final regulations have the force of law, while proposed regulations generally do not (except that proposed regulations can be cited as substantial authority for avoiding the understatement of income tax liability under I.R.C. § 6662(b)(2)).”<sup>49</sup>

Certain DST professional firms that suggest otherwise online fail to address the 2006 US Treasury Regulation that explicitly terminates this strategy.

As a result, investors should no longer rely on private annuities under IRS Code § 72 to defer capital gains tax on sale proceeds exceeding \$5 million. Investors have a few options: accept the low-interest loan, consider alternative tax-advantaged strategies for amounts above the \$5 million threshold, or simply pay the capital gains tax on the excess amount and exclude it from the installment agreement.

### **Benefits of Deferred Trusts Compared to § 1031 Exchanges**

Investors aim to buy low and sell high, but those using a § 1031 like-kind exchange face certain constraints. To benefit from capital gains deferral, they must reinvest the proceeds into another real estate property within 45 days, regardless of market conditions.

This requirement prevents investors from holding cash and waiting for an optimal investment opportunity. Instead, they must reinvest in real estate of equal or greater value shortly after selling their previous property. Many investors prefer to buy during market downturns or seek deals that may not materialize within the tight time frame imposed by § 1031 exchanges.<sup>50</sup>

With your DST you can sit on cash until the cows come home lying in wait for the next home run investment. You can reinvest at any time in anything your economic heart desires - a determinative advantage over § 1031 exchanges.

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<sup>47</sup> [Proposed Treas. Reg. Sec. 141901-05](#), 2006 IRB 47; [irs.gov/irb/2006-47\\_IRB#REG-141901-05](#)

<sup>48</sup> [taxlawsolutions.net/2016/10/04/irs-giveth-irs-taketh-away.htm](#); [en.wikipedia.org/wiki/Private\\_annuity\\_trust](#)

<sup>49</sup> [legalresearch.usfca.edu/c.php?g=523831&p=3581100](#)

<sup>50</sup> [irs.gov/pub/irs-news/fs-08-18.pdf](#)



## **Advantages of DSTs Over Qualified Opportunity Zones**

By reinvesting capital gains into a Qualified Opportunity Zone, you can defer paying capital gains tax.<sup>51</sup>

The main drawback of reinvesting in Qualified Opportunity Zones is that you're restricted to investing only within these designated areas. While there may be some valuable opportunities, Deferred Trusts (DSTs) offer a broader scope for reinvesting capital gains tax-free. DSTs allow for reinvestment across a wide range of investment options, rather than limiting you to economically distressed areas that may not be as attractive or profitable.

## **Advantages of DSTs Over Solo 401(k) Plans**

If you own a business with just yourself and your spouse as employees, you can set up a solo 401(k) plan. This plan allows you to contribute either pre-tax funds with tax deferral on gains until retirement (traditional 401(k)) or after-tax funds with tax-free gains (Roth 401(k)). The key difference is that traditional 401(k) contributions are tax-deductible within statutory limits, while Roth contributions are not deductible but offer tax-free growth.

For businesses with employees, the 401(k) plan must be offered to all employees, not just the owners.

While solo 401(k) plans can sometimes offer investment flexibility, very few company-sponsored 401(k) plans allow you to fully self-direct your investments.

Here are some limitations of 401(k) plans compared to Deferred Trusts (DSTs):

If you own a business with just yourself and your spouse as employees, you can establish a solo 401(k) plan. This plan allows you to contribute either pre-tax funds, deferring taxes on gains until retirement (traditional 401(k)), or after-tax funds, which provide tax-free growth (Roth 401(k)). The main difference is that traditional 401(k) contributions are tax-deductible up to statutory limits, while Roth contributions are not deductible but grow tax-free.

For businesses with employees, the 401(k) plan must be extended to all employees, not just the owners.

Although solo 401(k) plans can offer some investment flexibility, most company-sponsored 401(k) plans do not allow full self-direction of investments.

Here are some limitations of 401(k) plans compared to Deferred Trusts (DSTs):

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<sup>51</sup> [irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions](https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions)

- **Contribution Limits:** 401(k) plans have relatively low contribution limits. In 2023, the maximum contribution is \$22,500 per spouse, plus an additional \$7,500 for those aged 50 and over (with potential changes pending).<sup>52</sup> You can also contribute up to \$66,000 with matching contributions from your business.<sup>53</sup>
- **Early Withdrawals:** Withdrawals from a 401(k) before age 59.5 are generally restricted, except for:
  - Plan-authorized loans up to \$50,000<sup>54</sup>
  - Qualified medical expenses<sup>55</sup>
  - Hardship funeral expenses<sup>56</sup>
  - Hardship educational expenses<sup>57</sup>
  - Qualified SEPP (Substantially Equal Periodic Payments) plans<sup>58</sup>
  - Tax-paid Roth contributions<sup>59</sup>
- **Investment Leverage:** Except for non-recourse real estate loans, you cannot use leverage with 401(k) funds.<sup>60</sup>

401(k) plans come with numerous restrictions and limitations, which do not apply to Deferred Trusts (DSTs).

## DST Advantages Over Delaware Statutory Trusts

Delaware statutory Trusts- the other “DST” - allows your § 1031 exchange to be placed in a real estate fund for accredited investors. Having fractional ownership, Delaware Statutory Trust participants gain greater real estate diversification through passive ownership and can enjoy regular distributions of trust income.

The disadvantage of Delaware statutory Trusts when compared to DSTs are that:

- you cannot control your reinvestment through trust guidelines and trustee consultation - you become a passive real estate investor;
- unlike exchange traded REITs, this investment is not liquid;
- you must qualify as accredited investor to participate; and
- you are time-restricted in the reinvestment with no meaningful market timing allowed.<sup>61</sup>

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<sup>52</sup> [irs.gov/newsroom/401k-limit-increases-to-22500-for-2023-ira-limit-rises-to-6500](https://www.irs.gov/newsroom/401k-limit-increases-to-22500-for-2023-ira-limit-rises-to-6500)

<sup>53</sup> [forbes.com/advisor/retirement/401k-contribution-limits/](https://www.forbes.com/advisor/retirement/401k-contribution-limits/)

<sup>54</sup> [irs.gov/retirement-plans/plan-participant-employee/retirement-topics-loans](https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-loans)

<sup>55</sup> [irs.gov/retirement-plans/401k-plan-hardship-distributions-consider-the-consequences](https://www.irs.gov/retirement-plans/401k-plan-hardship-distributions-consider-the-consequences)

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> [investopedia.com/ask/answers/101314/how-do-you-withdraw-money-your-401k.asp](https://www.investopedia.com/ask/answers/101314/how-do-you-withdraw-money-your-401k.asp)

<sup>59</sup> [bankrate.com/retirement/how-to-withdraw-from-401k-early/](https://www.bankrate.com/retirement/how-to-withdraw-from-401k-early/)

<sup>60</sup> [forbes.com/sites/forbesfinancecouncil/2022/09/02/using-an-ira401k-to-invest-outside-the-stock-market/](https://www.forbes.com/sites/forbesfinancecouncil/2022/09/02/using-an-ira401k-to-invest-outside-the-stock-market/)

<sup>61</sup> *Delaware Statutory Trusts*, (2022) [Kiplinger.com](https://www.kiplinger.com)

## DST Advantages Over Charitable Remainder Trusts

Deferred Trusts (DSTs) offer significant advantages compared to Charitable Remainder Trusts (CRTs). While CRTs allocate a portion of your sale proceeds to a charity upon your death or when the trust term ends, DSTs allow you to retain the entire sale proceeds and any reinvestment returns for your beneficiaries.

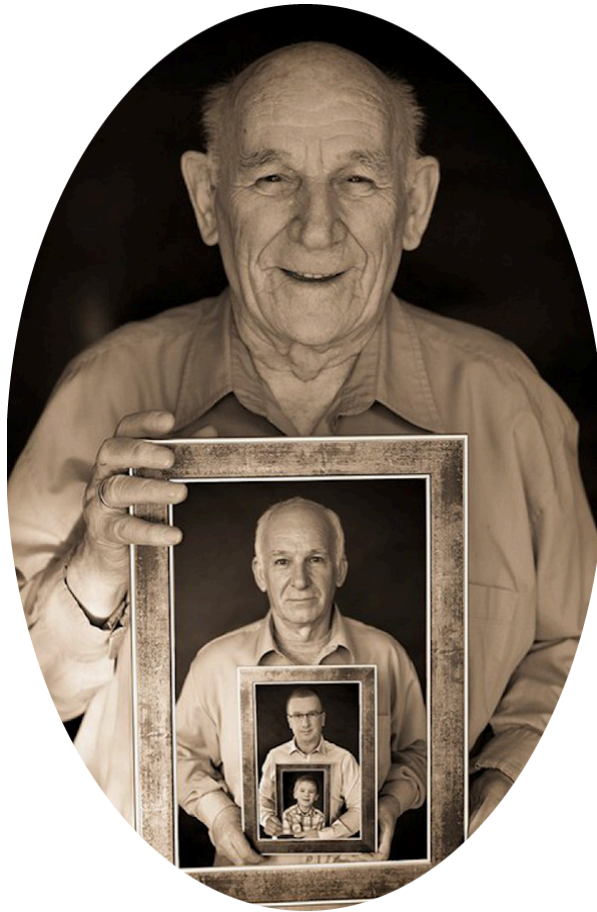
Here are the key benefits of DSTs over CRTs:

- **Full Retention of Proceeds:** Unlike CRTs, where only a fraction of your sale proceeds is retained and eventually donated to charity, DSTs let you keep the full amount of your sale proceeds and the associated return on investment (ROI) before taxes, accessible to your beneficiaries.
- **Tax Benefits of CRTs:** CRTs do offer some tax advantages, such as deferring capital gains tax on the transferred property until payments are made through trust installments and allowing the grantor a tax deduction, typically around 10% of the trust corpus. This deduction can be carried forward for up to five years if not fully used in the year of transfer.
- **Payment Options:** CRTs can provide either a fixed annuity or a percentage of trust assets, but there are limitations. For a CRT to comply with regulations, it must retain about 10% of the trust's value. If set up as an annuity, the trust may deplete before payments end. Even with a fixed percentage payout, the trust might be nearly exhausted before beneficiary payments conclude.

CRTs might be beneficial for certain objectives, particularly for proceeds over \$5 million, depending on the grantor's goals. They can complement a DST or serve a different strategic purpose in your asset management plan. Consult with your trust CPA to determine if a CRT aligns with your overall strategy.

For a comprehensive understanding of CRTs, consider watching [the insightful six-part video series](#) by Russell James, a professor at Texas Tech University's School of Financial Planning.

## five | the dynastic trust



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A dynastic trust is a strategic tool for ensuring that your wealth benefits not just your children but also future generations. It can provide support for education, first-time home purchases, medical emergencies, or capital to help your descendants achieve their own success through hard work and business acumen.

Unlike simple inheritances that may be mismanaged or squandered, dynastic trusts are designed to avoid creating entitlement and dependency. Instead, they provide a hand up rather than a handout, encouraging ambition and responsible management of family resources.

Creating a dynastic trust can be achieved affordably and effectively through various strategies, including:

- **Family Trusts:** Including Deferred Trusts (DSTs) for comprehensive estate planning.

- **Whole Life Insurance Policies:** Using these to ensure a steady growth of family wealth across generations.
- **Strategic Investments:** Aligning trust investments with long-term commodities supercycles and diversifying across different asset classes.

By centralizing family wealth within trusts and managing its growth strategically, you can regulate beneficiary distributions to support character-building and constructive endeavors. This approach helps avoid the pitfalls of creating dependency, as discussed in the previous chapter on entitlement.

In "What Would The Rockefellers Do?: How The Wealthy Get And Stay That Way, And How You Can Too" (2016), Garrett Gunderson analyzes the trust strategies that sustained the Rockefeller family, a top 50 richest family today. Gunderson contrasts the Rockefellers' dynastic success with the Vanderbilts, a similarly wealthy family that lost its fortune after just three generations due to poor inheritance management.

A key component of the Rockefellers' success was the use of whole-life insurance to continually replenish and grow family trust wealth in a strategic manner. This practice, along with centralized wealth management and focusing on character-building contributions, played a crucial role in their lasting legacy.

### **How to Secure Dynastic Wealth on a Budget**

There's a powerful insurance product that can sustain intergenerational trust wealth at minimal cost. This tax-advantaged tool:

- Offers historical safety superior to traditional banks
- Provides tax-advantaged compounding on dividends and distributions
- Allows the trust to leverage premiums paid for other investments through low-cost guaranteed borrowing
- Features a borrowing interest rate historically lower than the dividend distribution, enabling policy cash value to grow unhindered by the loan
- Delivers substantial payouts upon the death of family members, ensuring a significant influx of wealth to replenish or expand the trust for future generations

Top investment experts work for life insurance companies, and banks themselves invest billions in life insurance policies, often holding twice as much in life insurance as in real estate on their balance sheets.<sup>62</sup>

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<sup>62</sup> [bankingtruths.com/banks-branch/](https://bankingtruths.com/banks-branch/)

Life insurance dividends enjoy tax sheltering due to their significant social benefits, making their compounding superior to other low-risk investments like U.S. Treasuries, bank CDs, or bonds. Additionally, death benefits are entirely tax-free.

Life insurance companies are experts at hedging their investments to maximize returns while minimizing risks, boasting a century-long track record of steady, reliable performance.

Whole life policies from mutual insurance companies provide guaranteed tax-free growth rates of 2-3%, along with reliable, tax-free annual dividends. As Albert Einstein famously noted, compound interest is the "eighth wonder of the world." This tax-free interest-on-interest effect allows your trust funds to grow exponentially, turning them into a family fortune in a secure and dependable manner.

Few investments offer the safety and reliability of a well-structured whole life mutual insurance policy. It's no surprise that banks prefer these policies as investment vehicles and that industry giants like Disneyland, McDonald's, J.C. Penney, Foster Farms, and Pampered Chef use them for capital formation.<sup>63</sup>

Whole-life mutual insurance policies should be a cornerstone of your strategy for ensuring intergenerational family wealth.

Mutual life insurance companies, owned entirely by their policyholders, offer significant advantages. Unlike stockholder-owned companies, all gains are directed to policyholders, not siphoned off as profits to shareholders.

These mutual life insurance companies provide a tax-free, multi-million dollar wealth-building option at a minimal opportunity cost. Here's how they work:

1. **Select a Mutual Life Insurance Company:** Ensure that dividends paid on your policy are not diluted by public shareholder dividends.
2. **Maximize Policy Cash Value:** Opt for whole life insurance with paid-up additions and term insurance riders to build cash value that closely matches or exceeds your paid premiums.
3. **Leverage Your Policy:** Borrow against the policy's large death benefits up to the cash value created by your premiums. The interest rate on these loans is typically more than offset by the tax-free distributions from the insurance company.
4. **Manage Loans Wisely:** Use the cash flow from the policy and reinvestments to repay any loans. Avoid using the death benefit to cover these loans.
5. **Reinvest or Compounding:** After making premium payments, a significant portion of the policy's cost will be returned to you through cost-free loans. You can reinvest this

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<sup>63</sup> [paradigmlife.net/5-businesses-saved-cash-value-life-insurance/](https://paradigmlife.net/5-businesses-saved-cash-value-life-insurance/)



amount or allow the policy's cash value to continue compounding if no better investment opportunities are available.

As each generation passes, death benefits from the policy will flow into your family trust, creating a nearly cost-free, continuous influx of wealth thanks to the compounding results from these time-tested, expertly managed whole-life mutual insurance policies.

This strategy leverages top investment minds working on returns from your paid premiums. You benefit from policy returns that are not diminished by policy loans; instead, these loans are secured by the policy's death benefits. Additionally, you receive guaranteed loans at interest rates lower than the growth and dividends of the policy, allowing you to reinvest the premium payments into other investments chosen by your trust. Essentially, you gain returns from both the policy and the reinvested policy loans, effectively doubling your investment return with a single capital outlay. Where else can you achieve such a dual return on one investment?

Furthermore, loans used for reinvestment are tax-free and can be repaid with policy dividends, making them largely cost-free. This means your trust's premium investments are only temporarily diverted from generating returns, with minimal impact on your overall investment portfolio.

As your whole life mutual insurance policy distributes funds to cover loan repayments, you benefit from a positive delta between the policy's cash value growth and the loan repayments. Meanwhile, your trust's reinvestments are minimally affected by the temporary allocation of funds to these policies.

Ultimately, your family can receive multi-million dollar payouts each generation with nearly no opportunity cost, thanks to the financial expertise of the mutual life insurance company.

The trust can own policies funded by the trust itself. Since the seller is not the insurance beneficiary, having the seller insured does not violate trust rules. The trust can be the beneficiary of these policies to safeguard against potential mismanagement of windfall funds by less responsible family members. The generational death benefit payouts will significantly replenish the trust's investments, supporting family members in a way that empowers rather than corrupts.

Each generation has the opportunity to educate, train, and eventually transition family trustee responsibilities to a knowledgeable family member, investment professional, or a group of family members who are invested in learning how to manage the trust effectively for future generations.

This approach to using whole life insurance from mutual insurance companies in generational estate planning goes by various names. So, why not channel your capital through whole life mutual insurance policies first, borrow against the death benefits at a net positive ROI, then reinvest those funds into the investments you were planning to make anyway—while also securing millions in death benefits for each generation? What's the downside? The upside is building millions in trust fund assets that would otherwise be lost.

Be the person in your family who steps out of the financial stone age and creates lasting generational wealth for future generations with this low-risk, smart strategy.<sup>64</sup>

### **Align Investment Goals With The Commodities Supercycle**

It's an obvious principle that a well-diversified investment portfolio should include real estate, bonds, equities, and alternative assets like Bitcoin, so I won't dwell on that here. There are plenty of resources available that cover these asset classes in detail.

Instead, I want to focus on a long-term asset trend that offers strong potential for sustained trust asset growth and income: the emerging commodities supercycle.

I've closely followed a select group of experienced, proven natural resource investors, and their insights into long-term economic cycles in the natural resources sector have consistently delivered exceptional returns.

For reasons I will outline, I'm confident we're on the verge of a new commodities supercycle. In particular, sectors like uranium, copper, and silver are positioned for a decade-long bull market with substantial capital gains.

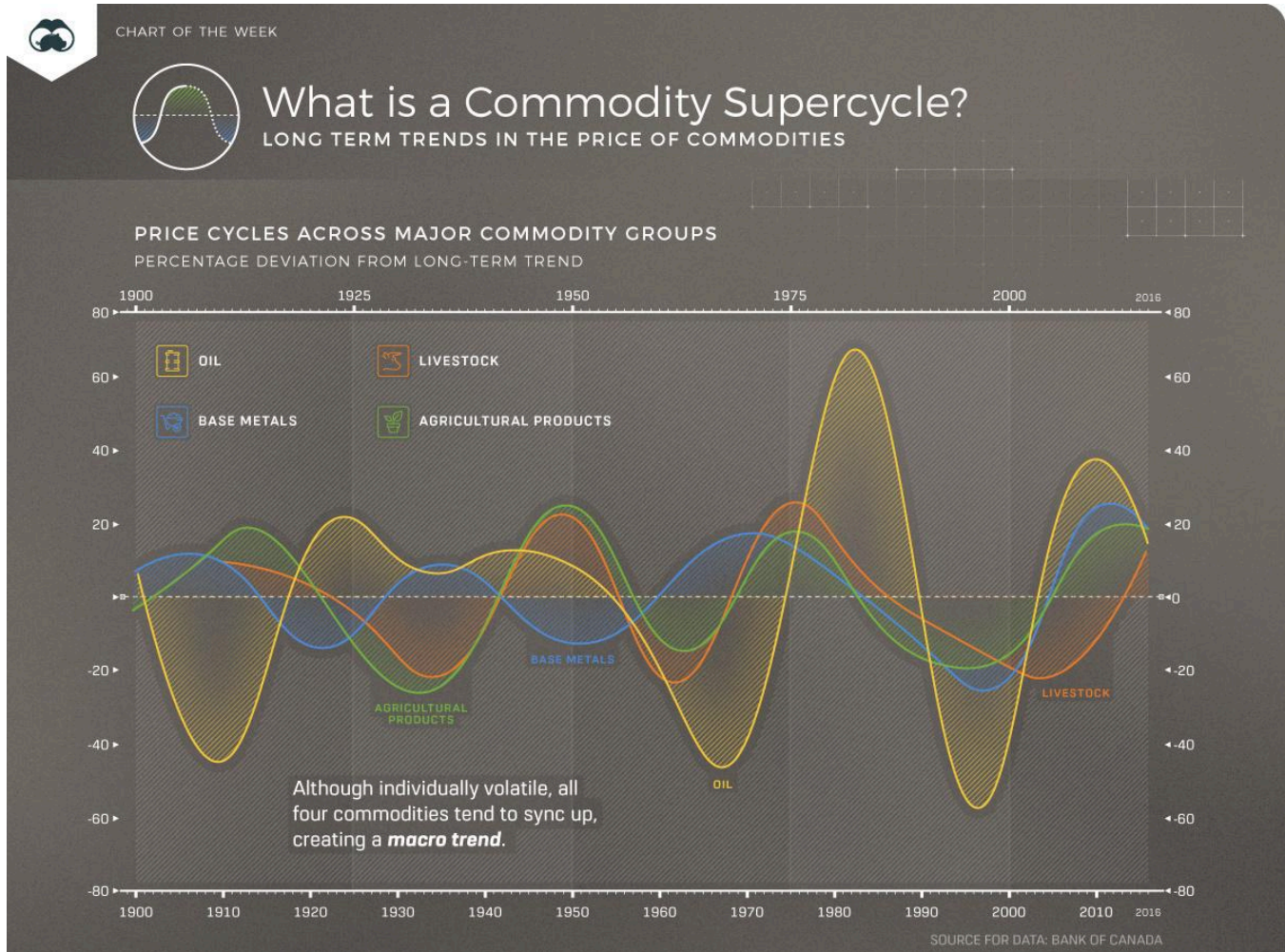
These commodities could be among the most lucrative asset classes over the next 10 years and beyond. If you share my outlook on the commodities supercycle, I encourage you to consider incorporating best-in-class companies from these sectors into your long-term trust investments.

I've made significant investments in these world-class companies through my own personal trusts, family and business trusts, as well as those trusts where I serve as trustee (respecting the wishes of the grantors, of course).

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<sup>64</sup> See, the classic [\*Becoming Your Own Banker\*](#) (5th Ed. 2008) by R. Nelson Nash

## a.) the upcoming commodities supercycle



A commodities supercycle is characterized by a prolonged period of rising demand, supply, and prices across various commodities.<sup>65</sup> Commodities supercycles occur when suppliers struggle to keep up with sustained demand driven by global economic growth.

When producers flood the market with commodities in the absence of strong demand, prices plummet, often leading to financial ruin for those who overproduce. For base metal and energy producers, aligning production with solid, established demand is crucial.

However, producers who wait too long to respond to rising demand often find themselves too late, unable to prevent a significant supply shortfall. This mismatch leads to prolonged price surges, often lasting around a decade. While demand can increase rapidly due to economic activity, ramping up commodity production—whether it's copper, uranium, oil, or other metals—takes years to catch up.

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[spglobal.com/en/research-insights/featured/special-editorial/look-forward/the-world-isn-t-in-a-commodity-supercycle-but-it-should-be](http://spglobal.com/en/research-insights/featured/special-editorial/look-forward/the-world-isn-t-in-a-commodity-supercycle-but-it-should-be)

Increasing production of base metals, precious metals, and oil takes years, as mining and extraction are long-term processes. Since these industries can't quickly adjust to shifts in demand, the resulting supply often lags well beyond peak demand, eventually leading to a surplus and declining prices. This cycle repeats itself, driving the remarkably consistent 18.6-year global commodities supercycle.<sup>66</sup>

Driven largely by the developing world, global energy demand is projected to rise by 47% by 2050.<sup>67</sup> Additionally, the growing demands of the AI revolution are expected to double global energy consumption.<sup>68</sup> Energy investments in the developed world will increasingly be directed toward clean energy due to political and legal mandates.<sup>69</sup> Few commodity sectors stand to benefit as much as uranium—the key fuel for the next generation of safe, clean nuclear power—along with copper and silver, which are crucial for clean energy production.

At this juncture in the commodities supercycle, many reserves are historically low and unsustainably depleted. With burgeoning global demand for energy and electricity in developing regions, top-tier companies in these sectors are poised for a prolonged bull market. Once the surge in demand takes off, it will rapidly deplete remaining reserves and drive prices up for years, continuing the bull phase of this historically enduring supercycle.

### **b) royalty companies**

Royalty companies invest directly in commodity explorers, developers, and miners in exchange for a share of commodity production at terms not available to other investors. They receive payment either as a percentage of the income from commodities sold (royalties) or by acquiring a portion of the commodity production to sell or hold themselves (streams).

Unlike explorers, developers, and mining firms, royalty companies face limited liability—restricted to their initial investment—without exposure to the broader industry risks such as capital, labor, environmental, regulatory, or political issues.

When managed effectively, royalty companies can offer a superior investment option compared to owning individual mining stocks (due to diversification), company bonds (due to potential for appreciation), exchange-traded funds (due to better acquisition prices), or physical commodities (since mining equities often outperform direct commodity holdings).

Legendary natural resource investor Rick Rule provides further insights into why royalty and streaming companies represent an exceptional model for commodities investment.<sup>70</sup> For

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<sup>66</sup> [etf.com/sections/features-and-news/profitting-commodity-supercycle](https://etf.com/sections/features-and-news/profitting-commodity-supercycle)

<sup>67</sup> [spglobal.com/commodityinsights/en/market-insights/latest-news/oil/100621-global-energy-demand-to-grow-47-by-2050-with-oil-still-top-source-us-eia](https://spglobal.com/commodityinsights/en/market-insights/latest-news/oil/100621-global-energy-demand-to-grow-47-by-2050-with-oil-still-top-source-us-eia)

<sup>68</sup> [www.aei.org/op-eds/feeding-the-beast-ais-energy-demand-may-double-by-2026/](https://www.aei.org/op-eds/feeding-the-beast-ais-energy-demand-may-double-by-2026/)

<sup>69</sup> [media.rff.org/documents/Report\\_23-02\\_IUFa9f5.pdf](https://media.rff.org/documents/Report_23-02_IUFa9f5.pdf)

<sup>70</sup> [youtube.com/watch?v=\\_8zgn3qCv4Y](https://youtube.com/watch?v=_8zgn3qCv4Y)

these reasons, well-managed royalty companies are often the best option for trust investors seeking exposure to commodities.

### c) uranium



Nuclear power produces zero greenhouse gasses and is currently the only feasible option capable of generating clean energy at the scale needed to replace oil and meet the growing global demand for clean energy.<sup>71</sup>

Uranium, of course, is the fuel for nuclear power.

Historically criticized by environmentalists due to disasters such as Three Mile Island (1979), Chernobyl (1986), and Fukushima (2011), modern nuclear energy technology has become highly reliable and fail-safe.<sup>72</sup> The challenge of nuclear waste has been addressed with recycling technologies that convert nuclear waste into new nuclear fuel.<sup>73</sup>

Many green energy advocates have been slow to embrace nuclear energy due to its history of environmental disasters. However, most have now recognized that modern nuclear power is the most viable option for providing sufficient, safe, and clean energy to meet the growing global demand driven by population growth and advancements in AI technologies.<sup>74</sup>

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<sup>71</sup> [orano.group/en/unpacking-nuclear/7-good-reasons-for-turning-to-nuclear-power-to-combat-global-warming](https://orano.group/en/unpacking-nuclear/7-good-reasons-for-turning-to-nuclear-power-to-combat-global-warming)

<sup>72</sup> [world-nuclear.org/information-library/safety-and-security/safety-of-plants/safety-of-nuclear-power-reactors.aspx](https://world-nuclear.org/information-library/safety-and-security/safety-of-plants/safety-of-nuclear-power-reactors.aspx)

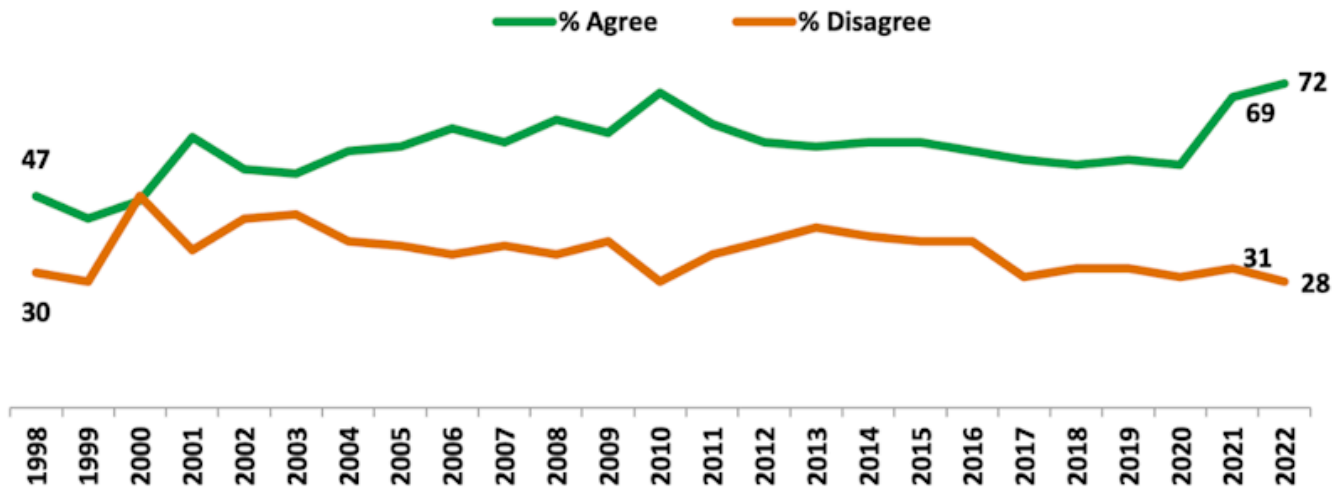
<sup>73</sup> [energy.gov/ne/articles/3-reasons-why-nuclear-clean-and-sustainable](https://energy.gov/ne/articles/3-reasons-why-nuclear-clean-and-sustainable)

<sup>74</sup> [npr.org/2022/08/30/1119904819/nuclear-power-environmentalists-california-germany-japan](https://npr.org/2022/08/30/1119904819/nuclear-power-environmentalists-california-germany-japan)



### Definitely Build More Nuclear Power Plants 1998-2022

How much do you agree or disagree with the following statements: We should definitely build more nuclear power plants in the future.(%)



75

There is an undeniable and substantial global shortage of uranium reserves.<sup>76</sup> Production will not be able to meet the anticipated demand for several years.<sup>77</sup> This situation is a classic setup for an inevitable multi-year bull market in uranium.

## URANIUM ROYALTY CORP

Uranium Royalty Company (NYSE: UROY) is ideally positioned in the uranium sector at a pivotal moment. As the first royalty company focused on uranium, it is spearheaded by Amir Adani, a leading figure in the industry and CEO of Uranium Energy Corp. Adani is a serially successful entrepreneur, having played a key role in URC (now UROY on NYSE), UEC, and GoldMining Inc., as well as its highly successful offshoot, Gold Royalty Corp.<sup>78</sup>

Leading investors in UROY include renowned natural resources experts Rick Rule, Sprott Investments, and Marin Katusa. UROY boasts an impressive portfolio of uranium royalty projects, featuring a world-class yellowcake placement and 18 other carefully selected, exceptional uranium royalty projects.<sup>79</sup>

UROY has secured over 1.5 billion pounds of high-quality uranium at an average cost of \$42.32 per pound, which is a 30% premium over the current spot price, even amid uranium's current low prices. Additionally, future royalties under contract include another 500,000 pounds of

<sup>75</sup> [bisconti.com/blog/public-opinion-survey-finds](https://bisconti.com/blog/public-opinion-survey-finds)

<sup>76</sup> [cruxinvestor.com/articles/uraniums-compelling-investment-case](https://cruxinvestor.com/articles/uraniums-compelling-investment-case)

<sup>77</sup> [world-nuclear.org/press/press-statements/more-uranium-development-needed-to-meet-demands-of.aspx](https://world-nuclear.org/press/press-statements/more-uranium-development-needed-to-meet-demands-of.aspx)

<sup>78</sup> [privateplacements.com/campaign/the-new-way-to-play-uranium](https://privateplacements.com/campaign/the-new-way-to-play-uranium)

<sup>79</sup> [uraniumroyalty.com/\\_resources/presentations/corporate-presentation.pdf](https://uraniumroyalty.com/_resources/presentations/corporate-presentation.pdf)

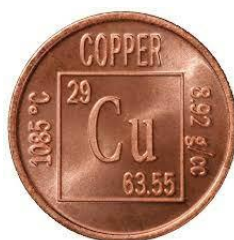
uranium at \$47.71 per pound through 2025, stemming from UROY's royalty agreement with CGN Global Uranium Limited.<sup>80</sup>

Despite UROY's top-tier portfolio of uranium royalties, it currently has a low market cap of just \$196 million and a bargain book-to-value ratio of 1.49. This undervaluation is likely to surge as uranium retail investors turn their attention to the sector, especially as reserves deplete and prices rise, which has already begun.

For added diversification, consider incorporating Global X's uranium ETF (URA) into your trust's holdings, and invest in physical uranium through Sprott's Physical Uranium Trust (SRUUF).

For those with a higher risk appetite, UROY offers a warrant with a strike price of \$2.00, expiring on December 6, 2024, which is currently trading at \$0.94 on the Toronto Stock Exchange.<sup>81</sup> If uranium prices rise significantly before the warrant expires, its value could increase many times over its current price. Allocating a small portion of your uranium investment to these warrants could lead to substantial returns if uranium prices continue to climb. Warrants are a type of option issued directly by the company; you can learn more about them here.<sup>82</sup>

#### d) copper



Renowned natural resources financier Rick Rule considers mining legend Robert Friedland to be on a highly exclusive "A" list of the top minds in the natural resources sector.<sup>83</sup> Mr. Friedland is uniquely positioned to predict that copper is set to experience a "tenfold explosion" in value.<sup>84</sup> The reasons are similar to those for uranium: a failure to increase supply in anticipation of "accelerated demand":

"The world is facing a crisis of supply in copper, with not enough mines being built to satisfy future demand, he said. \* \* \*

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<sup>80</sup> *Ibid.*

<sup>81</sup> [sec.gov/Archives/edgar/data/1711570/000149315221009471/ex99-50.htm](https://sec.gov/Archives/edgar/data/1711570/000149315221009471/ex99-50.htm)

<sup>82</sup> [investopedia.com/ask/answers/08/stock-option-warrant.asp](https://investopedia.com/ask/answers/08/stock-option-warrant.asp)

<sup>83</sup> [privateplacements.com/videos/legendary-mining-investor-rick-rule-on-the-power-of-private-placements](https://privateplacements.com/videos/legendary-mining-investor-rick-rule-on-the-power-of-private-placements)

<sup>84</sup> [zerohedge.com/commodities/billionaire-mine-owner-warns-copper-market-headed-train-wreck-supply-woes-emerge](https://zerohedge.com/commodities/billionaire-mine-owner-warns-copper-market-headed-train-wreck-supply-woes-emerge)



"Copper is essential in electric vehicle motors and batteries, as well as cabling and transformers, to build out the nationwide electric vehicle charging infrastructure in the US and worldwide.

"According to a recent S&P Global report, EVs require twice as much copper as an internal combustion engine vehicle. The report said copper demand will double to 50,000,000 metric tons annually by 2035, more than all the copper consumed worldwide between 1900 and 2021.

"Friedland's longer-term view of higher copper prices is supported by a combination of decarbonization efforts globally, rising China demand, the emergence of India, and the modernization of militaries after the Ukraine war.

"He said the market has yet to realize the significance of copper and how it is essential to decarbonization efforts. He noted there are very low physical inventories of copper with historically low relative valuations of mining companies.

"Friedland pointed out that recent acquisitions of mines at high premiums indicate the mining industry is aware prices of the metal are headed higher. He said the tightening of the copper market could increase prices like other commodities in recent years.

"When metals are required, the prices go crazy and nobody's willing to sell them', he said. 'We're heading into that sort of situation.'

"Even with increasing gloom about the global economy as global central banks tighten interest rates, Friedland remains very bullish on copper."<sup>85</sup>

According to leading experts in the natural resources sector, copper is a top choice for investing trust assets for long-term capital appreciation.

Rick Rule has been advocating for Robert Friedland's Ivanhoe Mines (IVPAF) since it was valued at just a fraction of its current market capitalization of \$11.6 billion. My family trusts are deeply grateful for his insights. Despite this, Ivanhoe, under Friedland's leadership, remains attractively priced relative to its current enterprise value, which is three times its market price as of now. The company's price-to-earnings ratio (24.95) and price-to-book ratio (3.85) are not the best indicators of its value since Ivanhoe is heavily investing in capital expenditures. These ratios will improve as the mines reach their full production potential.

Rick Rule considers Ivanhoe's copper projects to be among the top three copper discoveries of the last century and views their current collection of copper resources as the best available globally.<sup>86</sup> Trust assets are wisely invested in Ivanhoe Mines for the foreseeable future.

Ivanhoe is listed on the Toronto Stock Exchange in Canada and also trades on the US over-the-counter market under the ticker IVAPF.

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<sup>85</sup> *Ibid.*

<sup>86</sup> [bnnbloomberg.ca/video/rick-rule-discusses-ivanhoe-mines~2392154](https://www.bnnbloomberg.ca/video/rick-rule-discusses-ivanhoe-mines~2392154)

As Ivanhoe is not a royalty company, it lacks the diversification needed for a comprehensive trust investment in copper. To complement your trust's investment in Ivanhoe, consider adding one or more of these top copper ETFs: Global X Copper Miners (COPX), US Copper Index (CPER), or iPath Series B Bloomberg Copper Subindex Total Return (JJC).<sup>87</sup>

#### e) silver



Silver has been used as money since ancient times and has historically served as a safe haven during periods of inflation and financial crises.<sup>88</sup> Silver is a crucial component in the jewelry industry and is widely used in electronics due to its excellent electrical conductivity. Currently, silver is at historically low levels compared to the price of gold.

The silver market has experienced a decade-long stagnation in both price and production.<sup>89</sup> In 2022, global silver production totaled 822 million ounces.<sup>90</sup> This represents a 0.6% decrease year over year, with a projected growth of just 2.4% in 2024.<sup>91</sup>

However, silver's crucial role as an industrial metal in two rapidly expanding green energy sectors positions it for significant future growth. We are on the brink of a surge in global silver demand, driven by its essential use in green energy technologies. This makes silver as promising an investment as uranium and copper in the commodities market.

Despite a slight 0.5% decrease in silver supplies in 2022, demand for silver surged by 18%.<sup>92</sup> Currently, two green sectors—solar power and electric cars—together account for 30% of global annual silver production. Solar power consumes 160 million ounces, while electric cars use 80 million ounces.<sup>93</sup> Solar power and electric vehicle production alone are expected to absorb the entire projected silver production over the next two decades.<sup>94</sup>

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<sup>87</sup> [fool.com/investing/stock-market/market-sectors/materials/metal-stocks/copper-stocks/copper-etfs/](https://fool.com/investing/stock-market/market-sectors/materials/metal-stocks/copper-stocks/copper-etfs/)

<sup>88</sup> [cnbc.com/2023/01/20/metals-silver-prices-could-hit-a-9-year-high-in-2023-outpacing-gold.html](https://cnbc.com/2023/01/20/metals-silver-prices-could-hit-a-9-year-high-in-2023-outpacing-gold.html)

<sup>89</sup> [statista.com/statistics/253293/silver-production-volume-worldwide/](https://statista.com/statistics/253293/silver-production-volume-worldwide/)

<sup>90</sup> [World Silver Survey 2023](#), page 9.

<sup>91</sup> *Id.*, pages 9, 14.

<sup>92</sup> *Ibid.*

<sup>93</sup> [Cambridge House interview of First Majestic CEO Keith Nuemeyer](#)

<sup>94</sup> *Ibid.*

There isn't enough silver being mined to meet the total demand, and, like any mined metal, ramping up supply will take several years.

The price of silver is poised to react dramatically. When demand is significantly constrained and no alternative is readily available, prices will soar, ensuring that the limited metal is allocated to its most crucial economic uses. Prepared investors in top-tier silver companies will benefit greatly when this occurs.

Additionally, this analysis does not account for silver's historical role as a safe haven alongside gold during times of financial stress—a factor that many experts are currently warning about.



Wheaton Precious Metals (NYSE: WPM) has the highest silver exposure among royalty and streaming companies, with half of its revenue derived from silver streams.<sup>95</sup> They return 30% of their average operating cash flows to shareholders through dividends.<sup>96</sup> Leading experts in the natural resources field agree that Wheaton Precious Metals offers the best collection of silver assets in the industry. It provides all the benefits of a diversified silver portfolio without the real-world risks faced by actual silver miners, such as unexpected capital expenditures and significant environmental, regulatory, and political challenges. This royalty company delivers comprehensive exposure to the silver market.

If you're considering adding physical silver to your trust portfolio, I recommend Sprott Physical Silver Trust (NYSE: PSLV), which I trust and personally own. For a more detailed analysis of the upcoming silver supercycle, check out the insightful recent interview by Jay Martin of Cambridge House with Keith Neumeyer, CEO of Majestic Silver.<sup>97</sup>

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In my opinion, according to leading experts in the natural resources sector, uranium, copper, and silver are poised for the most significant capital appreciation within the commodities asset class. Trust investors should consider acquiring a solid understanding of technical analysis, as it can provide valuable insights into the timing of both entry and exit strategies during this upcoming supercycle bull decade.<sup>98</sup> At most, you should enter one-third of your positions when prices pull back to support levels over a period of several months.

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<sup>95</sup> [Investing In Silver Stocks](#) (April 2023) The Motley Fool

<sup>96</sup> *Ibid.*

<sup>97</sup> Cambridge interview of Nuemeyer, *id.* (silver discussion starts @ 21:28)

<sup>98</sup> [amazon.com/Technical-Analysis-Financial-Markets-Comprehensive/dp/B087Z1SPT](https://www.amazon.com/Technical-Analysis-Financial-Markets-Comprehensive/dp/B087Z1SPT)

## **Harnessing a Significant Income Stream from Your Commodities Portfolio**

Generate substantial annual income from your commodity portfolio using low-risk, strategically timed naked put and covered call options.

An optimal investment portfolio should balance both capital appreciation and income. Historically, dividend-paying stocks have delivered superior total returns compared to non-paying stocks.<sup>99</sup> Factors contributing to the superior performance of dividend-paying stocks include the added fiscal discipline required from companies that pay dividends.<sup>100</sup> The cash distributed from these investments represents company profits shared directly with shareholders. Dividends provide portfolio owners with a cash flow option that non-dividend-paying stocks do not offer.

If income is needed or desired by DtT parties, dividends can generate revenue without the need to liquidate shares and incur unwanted capital gains taxes.

Some top-tier commodity companies in my portfolio share their profits through dividends, though some payouts are modest. For instance, as of this writing, Devon Energy, a leader in oil and gas, offers an attractive yield of 9.5%. Their royalty business is expected to continue generating income for investors as oil demand remains strong in the coming decades.

Precious metals royalty companies like Franco-Nevada and Wheaton Precious Metals offer dividends with yields of 1% and 1.4%, respectively. The leading copper mining company Freeport-McMoRan yields 1.5%. However, two top commodities investments, Uranium Royalty Company and Ivanhoe Mines, do not provide any dividend income.

While I value the dividend income from a portfolio of promising commodity sector stars, we can enhance our income by writing low-risk naked put and covered call options to generate additional revenue.

### **a.) how to earn income while building a supercycle commodities portfolio**

Instead of simply purchasing shares of these top-tier companies, you can earn income by offering downside protection to investors who are hedging their long positions or speculating on the stock's decline by selling naked put options. While this might sound intimidating, it actually reduces your risk by securing heavily discounted acquisition prices.

When you sell naked put options, you receive income from the option premiums paid by buyers, simply for committing to acquire shares you were planning to buy anyway.

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<sup>99</sup> [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4263210](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=4263210)

<sup>100</sup> [thebalancemoney.com/why-dividend-stocks-outperform-non-dividend-stocks-357353](http://thebalancemoney.com/why-dividend-stocks-outperform-non-dividend-stocks-357353)

For example, if you want to invest in the leading copper mining company Freeport-McMoRan, you can get paid to buy its shares.

Options are traded in lots of 100 shares. As of now, Freeport-McMoRan (FCX) is priced at \$13.47. The average bid/ask premium for a \$14 strike price put option with a one-month duration is \$3.90. As the option writer, the \$14 strike price is the price at which the option buyer can sell the shares to you when the option expires in a month (or sooner, for American-style options). This is a naked put strategy because you do not own the shares yet.

If the stock price falls, the option buyer can exercise the right to sell the shares to you at the strike price before the option expires.

Since the current market price is \$0.53 below the strike price, the premium you receive includes \$0.53 of intrinsic value (the difference between the market price and the strike price). To determine the net premium you receive for writing the put option, subtract this \$0.53 equity from the total premium.



In our example, the total premium for the put option is \$3.90. Since the put option is \$0.53 in the money, the intrinsic premium paid by hedgers and speculators is \$3.37 per share.

This represents a 2.4% premium for just one month—not annually! On an annualized basis, this premium equates to over 19 times the dividend yield of FCX!

Unless you sell the option before expiration, there are two possible outcomes when the naked put option expires: the stock price will be either above or below the \$14 strike price.

If the price is above the strike price at expiration, you keep the premium and can repeat this process, potentially earning an annualized return of about 29%. You will acquire FCX when the market eventually pulls back and triggers the put.

If the price is below \$14 at expiration, you will be assigned the shares, but you still keep the premium. This means you've acquired FCX at a 2.4% discount compared to what you would have paid otherwise. Your downside risk is effectively reduced by this premium.

In either scenario, you benefit: either by collecting the premium if the put expires out of the money or by acquiring shares at a discount if the put expires in the money.

To enhance this strategy, time your put writing at the stock's support levels to increase the likelihood of repeating this income cycle before finally acquiring your shares.

Once you own the shares, you can use technical analysis to identify potential market tops. During these times, write covered call options to generate additional income. For example, if technical indicators like a double top or a divergent RSI suggest a high risk of a short-term pullback, you can sell covered calls to speculators at or near the current price, earning premium income with minimal risk.

If the stock pulls back, you keep your shares and earn additional income. If the stock rises despite the indicators, you sell your shares at the call option's strike price and can re-enter the market when the price retests support levels.

By combining covered calls with naked puts, you increase your income opportunities. You're effectively getting paid to hedge your own stock position during high-risk periods.

The income from these options can be reinvested into your growing portfolio of commodity assets (subject to tax considerations).

This strategy allows you to build a portfolio of world-class companies in supercycle sectors while generating income.

Exchange Traded Notes (ETNs) in desirable commodity sectors offer similar option-writing services, often paying generous dividends. For example, Credit Suisse offers two ETNs—SLVO in silver and USOI in oil—with impressive yields of 19.23% and 40.42%, respectively. However, these ETNs have lost much of their commodities bull run due to their lack of nuanced strategy and failure to employ naked puts or technical analysis.



While these funds use a blanket covered call strategy, which may not capture all potential upside, timing your own options with market conditions and technical analysis will likely yield a higher total return.<sup>101</sup>

### IShares Silver Trust vs. Credit Suisse Silver Covered Calls (1 year)



The chart above illustrates the significant losses that can occur with blind covered calls compared to the underlying security. This is a clear indicator that you can achieve better results with a more strategic approach.

If you own shares in a company that lacks a liquid options market—or any options market at all—you can use a similar commodity with a more active options market as a proxy. For instance, while Ivanhoe Mines doesn't offer options, Freeport-McMoRan, another copper producer, has a robust options market. As both are copper producers, their short-term price movements are closely aligned (with FCX, shown as the orange line, closely mirroring Ivanhoe's price).

<sup>101</sup> For more detailed information on writing options to enhance income on your portfolio, see [The Options Wheel Strategy](#) (Freeman Publications, 2021).





Each stock in the same sector tends to mirror the movements of the other, although one may outperform the other over time. For the purposes of monthly option writing, their correlation is exceptionally high.

If you hold Ivanhoe Mines but want to benefit from writing naked puts and covered calls, you can use Freeport-McMoRan (FCX) as a proxy. Write puts and calls on FCX while keeping track of its alignment with Ivanhoe's price movements. When FCX options expire worthless, you can either pocket the income or swap FCX for Ivanhoe if FCX shares are put to you. Similarly, if you're writing covered calls, keep your Ivanhoe shares if the calls expire worthless, or swap Ivanhoe for FCX if the shares are called away.

To implement this proxy strategy effectively, ensure both securities are of the same commodity and type. For instance, options on copper itself cannot be used as a proxy for copper mining stocks. Instead, choose between different copper mining companies (like FCX) or a mining index as a proxy.

Before executing this strategy, confirm there are no upcoming earnings reports or significant company news for either security that might cause discrepancies in their trading patterns.

Ensure your broker authorizes you to write options, as some brokers may impose restrictions. For example, Charles Schwab has been noted for its strictness in granting options writing authorization. In contrast, brokers like Fidelity and tastytrade (which I use) are more accommodating.

By mastering advanced options writing strategies, you could significantly boost your commodities portfolio's income. This approach might even surpass traditional investment methods in profitability!

Regardless of your investment strategy, you can either write options on your chosen equities or miss out on consistent premium income. Additionally, if your trust has enough deductions to offset generated income, passing trust income to beneficiaries can offer tax advantages, as trust tax rates on income often exceed those of beneficiaries. Consult with your trust CPA for the most efficient tax strategy for handling trust income.

### **Advanced Futures Hedging Strategies**

You can apply the hedging principles discussed earlier to the futures market for a cost-effective, leveraged approach to protecting your commodities portfolio. While this topic goes beyond the scope of this book, using technical analysis for hedging during market peaks and leveraging pullbacks can make futures a valuable tool.

### **Family And Business Trusts**

There are numerous effective strategies for managing businesses, holding assets, and overseeing entire estates through common law trusts.

Common law trusts can offer exceptional privacy, as the identities of the trust parties are not always publicly disclosed in jurisdictions like Nevada and Delaware, ensuring anonymity.

Using trusts to hold limited liability companies (LLCs) adds another layer of protection. An EIN tax ID from the IRS will reveal only the LLC, not the personal information of the trust beneficiaries.

By compartmentalizing assets into various LLCs, trusts, or a combination of both, you can legally safeguard them from liabilities spreading across entities. Depending on state tax laws and filing requirements, trusts might be more cost-effective than LLCs for creating layered protections.

Irrevocable trusts can also offer estate tax benefits by removing businesses, real estate, and other properties from a taxable estate, which can be advantageous for those facing potential estate taxes. Consult with a trust CPA for tailored estate planning advice.

Participants in [Commission-Free Deferred Sales Trust | SEMINAR](#) will gain access to comprehensive business and family trust services, along with DST templates.

six | entitlement



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“Hard times create strong men.  
Strong men create good times.  
Good times create weak men.  
Weak men create hard times”

**G. Michael Hopf**

“Toxic generosity is a real thing:  
give once: you elicit appreciation;  
give twice: you create anticipation;  
give three times: you create expectation;  
give four time: you create entitlement;  
give five times: you establish dependency;  
stop giving: you create enemies.  
You think you're helping but you're hurting the individual long term.  
Be intentional when you choose to give.”

**Patric Bet-David**

“Only the man who does not need it is fit to inherit wealth - the man who would make his own fortune no matter where he started. If an heir is equal to his money, it serves him; if not, it destroys him. But you look on and you cry that money corrupted him. Did it? Or did he corrupt his money?”

**Atlas Shrugged, Ayn Rand**

Centralizing wealth within thoughtfully managed family trusts, strategically overseeing its growth, and regulating its distribution to support constructive pursuits can provide a hand up rather than fostering dependency and diminishing ambition.

Wealth can amplify one's characteristics, for better or worse. The entitlement and inertia often seen in individuals who inherit wealth without having to earn it can be detrimental. However, trusts can be designed to prevent the development of negative traits and instead promote productivity and wealth-building in future generations.

Inheritors, or "trustafarians," are often shielded from the life experiences that build strong character. Like lottery winners, those who receive wealth without earning it may squander their fortune quickly, becoming disillusioned by an easy life.

Without the challenges that teach the value of money and the drive needed to overcome adversity, inheritors may miss out on crucial lessons. Just as diamonds require pressure to form, individuals often need to face difficulties to develop resilience and a strong work ethic.

Trusts can be crafted to either empower or undermine their beneficiaries.

Historical examples show that simply bestowing wealth upon descendants without proper financial education, estate planning, and controls can lead to a generational curse of diminished character. Conversely, well-structured generational wealth management through trusts can provide a strategic boost, aiding in the development of businesses, assets, investments, and estate planning, thereby benefiting family members for generations.

### **Pyro-Decamillionaire**

In his late 70s, a decamillionaire who built his fortune from scratch had a son whom he hoped would eventually take over the family construction business. To prepare his son for this responsibility, he set a challenging condition: the son had to earn \$100,000 on his own before the father would consider transferring control of the business.

Eager to prove himself, the son agreed. However, instead of working directly for the money, he approached one of his father's younger, successful electrician subcontractors with an enticing offer. The son promised a 100% return on investment annually once he assumed control of the family fortune. Seeing the opportunity for substantial gains, the subcontractor agreed to the deal.

With the funds secured, the son waited four months before presenting his success to his father. On a cold winter night, he arrived with a red Nike sports bag filled with 1,000 \$100 bills, neatly wrapped in plastic bricks. He entered his father's study, where his father was reading by a large, roaring fireplace. Smiling confidently, the son placed the bag on a walnut side table and began to explain how he had made the money trading stocks and options.

The father listened quietly, then, without even looking inside the bag, picked it up and casually tossed it into the blazing fire. The son's face fell as he watched the red bag become engulfed in

flames. Shocked and speechless, the son left the room without uttering a word, realizing that the subcontractor had likely informed his father of the deal.

Undeterred, the son approached another of his father's successful acquaintances in the financial sector the following week. He offered a written contract, guaranteed by his inheritance, promising a 100% return per year on \$100,000, with a minimum return of \$100,000, even if paid back in a few weeks. The deal was completed within a week, but this time the son waited six months before returning to his father with a \$100,000 cashier's check, concealed in a brown accordion folder.

Before he could finish explaining that he had made the money by importing French art, his father dropped the folder into the unlit fireplace, drenched it in lighter fluid, and set it ablaze with a wooden match. The son, overcome with tears and disbelief, watched helplessly as the check was consumed by the flames.

Realizing that he was losing his father's confidence and fearing he might never take over the family businesses, the son took on two jobs: a full-time position earning \$85,000 a year and a night bartending job with generous tips. It took him over two years of hard work to save up \$100,000.

When he finally returned to his father with the second cashier's check, he handed it over directly. As his father prepared to toss it into the fireplace, the son, with tears streaming down his face, covered the check with his body to prevent it from being destroyed. Seeing the genuine effort and sweat behind the money, his father was finally convinced.

Thus began the long, careful transition of the family business to the son. The initial \$200,000, which was paid by the father without delay and then reimbursed by the son from his salary over the next five years, marked the beginning of a new chapter in the family legacy.

## **Rockefellers v. Vanderbilts**

In 1877, shipping and transportation magnate Cornelius Vanderbilt was the wealthiest man in American history, with an estimated fortune of \$200 million—more than the entire US Treasury at the time. Unfortunately, Vanderbilt's massive wealth was passed down in a way that proved to be detrimental: it was simply handed over to his unprepared heirs.

While his son William Vanderbilt successfully built upon the family fortune, subsequent generations squandered the wealth through extravagant and ostentatious lifestyles. By 1973, not a single Vanderbilt was left a millionaire. Within less than 50 years, a descendant of one of the richest families in American history found himself destitute. Anderson Cooper, a great-great-great-grandson of Cornelius Vanderbilt, had to create a press pass to start his career at a modest news agency. The tragic downfall of the Vanderbilt fortune led William K.

Vanderbilt to remark, "Inherited wealth is a real handicap to happiness. It is as certain a death to ambition as cocaine is to morality."<sup>102</sup>

John Rockefeller, who amassed his industrial-age fortune in oil, took a different approach to managing generational wealth compared to the Vanderbilts. Rockefeller established trusts to centralize and professionally manage the family's wealth, safeguarding it from the destructive effects that poorly managed money had on unprepared heirs, as seen in the Vanderbilt family. While some of the Rockefeller fortune was used for grand residences and other luxuries, the focus was on preserving and growing the wealth through these trusts rather than dividing it to the point of depletion. Education and productive family businesses were given priority.

Rockefeller's strategy involved meticulous investment and estate planning, with trust professionals dedicated to preserving and expanding the family's assets. Measures were implemented to shield the fortune from irresponsible family members.

A key element of the Rockefeller approach was the inclusion of whole life insurance policies for each Rockefeller child, providing front-loaded cash values and death benefits. These policies replenished the trust investments, supporting the family's education and covering unprofitable business ventures.

By setting up trusts that not only ensured prudent investment and estate planning but also fostered the development of responsible and productive family members, the Rockefellers have successfully maintained their wealth and remain one of America's most influential families.

Be a Rockefeller, not a Vanderbilt.



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## APPENDIX A

### \*\*TWO INSTALLMENTS AT END OF LIFE EXPECTANCY

	DST UNDISTRIBUTED GAIN	DST SELLER DISTRIBUTIONS WITH INTEREST	PERSONAL TEAM PRINCIPLE COMPOUNDING (same for personal team and no DST at all)	PERSONAL TEAM ADMINISTERED DST FEES	PERSONAL TEAM ADMINISTERED DST CAPITAL GAIN PRE-TAX COMPOUNDING	CORPORATE TRUSTEE ADMINISTERED PRINCIPAL COMPOUNDING	CORPORATE TRUSTEE ADMINISTERED DST FEES (1.5% ON ALL PROCEEDS)	CORPORATE TRUSTEE ADMINISTERED DST CAPITAL GAIN PRE-TAX COMPOUNDING
BEGINNING BALANCE	\$0		\$746,000	\$5,000	\$254,000	\$746,000	\$15,000	\$254,000
YEAR 1	\$500,000	\$9,525	\$825,076	\$2,500	\$268,899	\$813,888	\$11,190	\$265,924
2	\$500,000	\$9,525	\$912,534	\$2,500	\$285,377	\$887,950	\$19,708	\$277,915
3	\$500,000	\$9,525	\$1,009,283	\$2,500	\$303,602	\$968,753	\$20,819	\$289,886
4	\$500,000	\$9,525	\$1,116,245	\$2,500	\$323,759	\$1,056,910	\$22,031	\$301,734
5	\$500,000	\$9,525	\$1,234,566	\$2,500	\$346,053	\$1,153,088	\$23,354	\$313,338
6	\$500,000	\$9,525	\$1,365,430	\$2,500	\$370,709	\$1,258,019	\$24,796	\$324,556
7	\$500,000	\$9,525	\$1,510,166	\$2,500	\$397,879	\$1,372,499	\$26,370	\$335,220
8	\$500,000	\$9,525	\$1,670,244	\$2,500	\$428,140	\$1,497,397	\$28,087	\$346,138
9	\$250,000	\$504,763	\$1,847,280	\$2,500	\$466,281	\$1,633,660	\$29,961	\$354,084
10	\$250,000	\$504,763	\$2,043,102	\$2,500	\$513,422	\$1,782,323	\$28,255	\$361,801
TOTALS	\$0	\$1,085,725	\$2,043,102	\$30,000	\$513,422	\$1,782,323	\$249,572	\$361,801



## APPENDIX B

### IRS Single Life Expectancy Table

Age	Life expectancy factor	Age	Life expectancy factor	Age	Life expectancy factor
0	84.6	41	44.8	82	9.9
1	83.7	42	43.8	83	9.3
2	82.8	43	42.9	84	8.7
3	81.8	44	41.9	85	8.1
4	80.8	45	41.0	86	7.6
5	79.8	46	40.0	87	7.1
6	78.8	47	39.0	88	6.6
7	77.9	48	38.1	89	6.1
8	76.9	49	37.1	90	5.7
9	75.9	50	36.2	91	5.3
10	74.9	51	35.3	92	4.9
11	73.9	52	34.3	93	4.6
12	72.9	53	33.4	94	4.3
13	71.9	54	32.5	95	4.0
14	70.9	55	31.6	96	3.7
15	69.9	56	30.6	97	3.4
16	69.0	57	29.8	98	3.2
17	68.0	58	28.9	99	3.0
18	67.0	59	28.0	100	2.8
19	66.0	60	27.1	101	2.6
20	65.0	61	26.2	102	2.5
21	64.1	62	25.4	103	2.3
22	63.1	63	24.5	104	2.2
23	62.1	64	23.7	105	2.1
24	61.1	65	22.9	106	2.1
25	60.2	66	22.0	107	2.1
26	59.2	67	21.2	108	2.0
27	58.2	68	20.4	109	2.0
28	57.3	69	19.6	110	2.0
29	56.3	70	18.8	111	2.0
30	55.3	71	18.0	112	2.0
31	54.4	72	17.2	113	1.9
32	53.4	73	16.4	114	1.9
33	52.5	74	15.6	115	1.8
34	51.5	75	14.8	116	1.8

Age	Life expectancy factor	Age	Life expectancy factor	Age	Life expectancy factor
35	50.5	76	14.1	117	1.6
36	49.6	77	13.3	118	1.4
37	48.6	78	12.6	119	1.1
38	47.7	79	11.9	120+	1.0
39	46.7	80	11.2		
40	45.7	81	10.5		

Source: Amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(9) of the Internal Revenue Code (Code), §1.401(a)(9)-9 Life expectancy and distribution period tables, (b) Single Life Table. This table generally applies for distribution calendar years beginning on or after January 1, 2022. This table sets forth the life expectancy of an individual at each age. Transition rules under the regulations may apply to certain beneficiaries when the original account owner or their surviving spouse died before January 1, 2022. Please consult a tax advisor to discuss whether the transition rules may apply to you.

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## APPENDIX C

### REV. RUL. 2023-12 TABLE 2

#### Adjusted AFR for July 2023

	<u>Period for Compounding</u>			
	<u>Annual</u>	<u>Semiannual</u>	<u>Quarterly</u>	<u>Monthly</u>
Short-term adjusted AFR	3.63%	3.60%	3.58%	3.57%
Mid-term adjusted AFR	2.91%	2.89%	2.88%	2.87%
Long-term adjusted AFR	3.01%	2.99%	2.98%	2.97%

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### REV. RUL. 2023-12 TABLE 3

#### Rates Under Section 382 for July 2023

Adjusted federal long-term rate for the current month	3.01%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.01%

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### REV. RUL. 2023-12 TABLE 4

#### Appropriate Percentages Under Section 42(b)(1) for July 2023

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.91%
Appropriate percentage for the 30% present value low-income housing credit	3.39%

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