

WINDOW OF OPPORTUNITY

REAL MONEY column for The Santa Fe New Mexican

By Rob Rikoon

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New Mexico has a window of opportunity to greatly expand a local industry. Many other state legislatures have already seen the financial benefits of creating and keeping high paying jobs as well as retaining investor capital that comes with expanding the legal definitions of permissible trust options.

Congress's recently enacted a tax bill in late December 2010 which has created a two year boom, 2011 and 2012, for the establishment of certain kinds of trusts, ones that can go on for many generations. In order to take advantage of this, investors have to find states that allow for "perpetual" or "near perpetual" trusts. So far, Delaware has the biggest lead and most favorable tax climate as one of its largest industries is serving business organizations: corporations, LLCs and also trusts.

Trust administration is a clean industry with little downside to their host states. They provide work to lawyers, accountants, bankers, investment advisors, realtors, computer technicians and administrative support staff. The problem is that New Mexico's current Trust law does not yet allow for these new types of trusts. Roughly half the states have already changed their laws to remain competitive in this clean and green industry.

In addition, changing New Mexico's trust tax laws to compete with states like Nevada, Alaska, New Hampshire, would eventually generate much needed tax revenue with minimal cost outlay. The increased cash flow that would come to the State of New Mexico as a result of expanding these businesses could be used to buttress the state's budget for oversight of the entire financial services industry.

What might prevent an elected official from voting for such an improvement to our state's business climate? Those philosophically opposed to the estate tax provisions of the new federal tax bill believe that families should pay estate tax every time one generation passes assets to the next. The implication of this belief is that successful small businesses and family homesteads ought not to remain in the same hands for decades.

There can be concern that real estate will not change hands and go stagnant or that administering trusts based on current rules might not serve family members as time goes on. These "perpetual" trusts usually have internal committees that oversee investments and they can make amendments to their charter and operations as times change. I have helped set up and participate on several such trust committees on behalf of our clients and up until now, have had to move them out of New Mexico and into Delaware. Due to the high degree of oversight given by the trust committee structure, there is active management and the number of real estate transactions increased in every case.

State senators and representatives have a rare opportunity to do something this session to make New Mexico a player in the field of trust administration. Whatever well intentioned misgivings or natural resistance to change anyone may have, we owe it to our citizens to pass this bill since if we don't, we risk falling further behind in the competition to attract and retain a growth industry of the 21st century.

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