



# Trust Company of Vermont Quarterly Update

January 2017

Brattleboro ♦ Burlington ♦ Rutland ♦ Manchester ♦ St. Albans

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## DÉJÀ VU

Jack Davidson

I am experiencing déjà vu. When I experience déjà vu, my colleagues grow concerned. To be sure, I sometimes wear the mantle of prophecy or pre-recognition, but I assure them that it is simply a “feeling” of recollection and that it is not unhealthy, citing studies that confirm déjà vu is a common experience in healthy individuals, with between 31% and 96% of individuals reporting it.

Perhaps instances of déjà vu appear more often during periods of stress. I see a correlation. I feel stress. Perhaps others in our trust company have the same feelings as well. We have the Thanksgiving Rule. Don't talk politics at Thanksgiving. Try not to talk politics at work. What we all have in common is not our politics, it is an old-fashioned family value of taking care of others, whether close family or extended family.



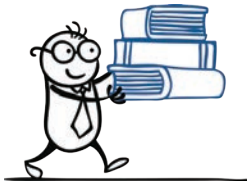
I try to hide my politics. That's why I don't write articles touting the estate tax endorsed by Warren Buffett, George Soros, Bill Gates Sr., and John C. Bogle, founder of the Vanguard Group. Warren can get away with it, but I can't.

One of my roles is estate planning and I enthusiastically try to save as many tax dollars as I can. It is that simple. Fortunately, my definition of “taking care” is only part of the definition, and we have others in our company, such as our administrators, who focus on taking care of the person, and managers who have been programmed to focus on “taking care” by avoiding too much risk in managing assets.

Taking care of others often involves taking tension “out of the room”, as they say, rather than bringing it into the room. Our job is to reduce tension between warring siblings, to address fears about the stock market, and to address planning around our mortality.



In times of uncertainty, we often look to the past to aid us in seeing the future. As a youth, I would run to the library. It was not fun to run to the library, so I did it less often than I should have in order to become a more enlightened person. Now it is so much easier. I simply run to my computer. It is such a blessing. Well, it may be a curse as well.



**P**ublishing books and scholarly papers takes time. Accuracy tends to survive better in a library than it does on the internet. If those skilled in using

the internet want to promote an inaccuracy, they can instantly publish in such places as Facebook, and reinforce those who want to believe the information.

**I** don't use Facebook. And I am not a fuddy-duddy. And, many of those who use Facebook don't even know what "fuddy-duddy" means.<sup>1</sup> So I ignore Facebook postings and tweets and I try to find legitimate sites that take pride in accuracy; mindful that accuracy may have slants.

Thoughtfulness takes time. Reflexes don't.

**I**n our company we sometimes focus on psychological preferences using both Meyers-Briggs and Enneagrams to address our reflexes. Our reflexes often need to be addressed as reflexes without meaning. Meaning often needs to control reflexes; as my colleague Jane might say to me: "Down, Boy!" (see her article and you will have a better understanding of her very capable perceptions). Once you go on the internet you might find what your reflex wants, but it may be without meaning.

**S**o my role as an estate planner continues. I need to understand the impact and probability of tax law changes as a result of the election of Donald Trump as the 45th President of the United States, and the Republicans having retained control over the House and Senate. Will a unified GOP make big changes over the future of our tax policy and how long will the tax policy remain the same after the next election?

<sup>1</sup> For example, I use Alexa and everyone in our company has an offspring of Alexa, a Dot. For those who don't know about Alexa, well, they may be fuddy-duddies.

**W**hat will the future look like? So I go to my computer and look for reputable sites (mindful of their slants):

Bloomberg: *"Trump's plan would replace the estate tax with a capital gains tax on the appreciation of inherited assets of more than \$10 million, subject to some exemptions for small businesses and family farms....." AND... "He may face a difficult time ushering in a permanent end to the estate and gift taxes, even with Congress on his side. Under current rules, a permanent repeal would require 60 senators to agree...."*

So, what I see is:

- No federal estate tax,
- the resurgence of "carryover" basis,
- and the Ten Year Rule.

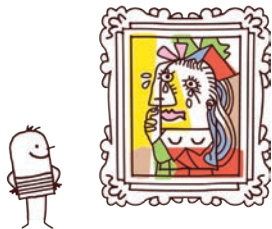
**A** déjà vu experience.....I see a pattern, or am I confused? Am I having flashbacks simply by reading the proposed changes in the tax code? Or am I trying to predict the future based on historical patterns?



**I**t was 1976.....The Tax Reform Act (TRA) of 1976 included a "carryover" basis provision for transfers upon death. Before the change, if, for example, my client gives an asset purchased for \$10 to his or her child and the child sells the asset for \$100, he or she will pay gain on \$90, but if the client leaves it to the child upon death, the gain will go away. The basis of the asset was "stepped-up" upon death. This change

implemented the “carryover” basis so the recipient received the same basis in the property that the decedent had before death. In short, the basis did not change and capital gains did not go away.

It was very unsettling. I was handling estates. I now needed to know the original cost basis on all assets purchased or gifted to the decedent.



Many of our clients were organized. Some were not. Often even the organized did not record the cost basis of heirlooms. Those who handled estates went

through a terrible time in those years. Fortunately, in 1980, these carryover provisions were repealed and replaced with “stepped-up basis” provisions that had existed before TRA of 1976<sup>2</sup>. Now, rather than going through file cabinets and drawers and sometimes the attic, we could now simply look up the date of death value in the Wall Street Journal and/or hire appraisers, and life became easier once again....and we could also sell over-concentrations in assets held simply to avoid the capital gains tax.

Approximately ten years later, it resurfaced once again, coupled with the repeal of the estate tax and the Ten Year Rule. The Ten Year Rule? The lack of 60 Republican votes in the Senate means that legislation would probably pass as a budget reconciliation with 10-year sunset provision (also known as the “Byrd” rule).

It was 2001..... Congress passed a law designed to get rid of the estate tax over a ten year period and have “carryover” basis resurface. It was subject to the Ten Year Rule. In 2010, the tenth year, the

<sup>2</sup> With the exception of joint spousal property acquired after 1975

federal estate tax was repealed and “carryover” basis came back to life. Then in 2011, the federal estate tax came back to life and the “carry over” basis was once again replaced by the “step-up” in basis.

Will we have another ten year cycle? Will there be a cycle? Will we have a 4 year cycle depending on who gets elected on the presidential cycle of 4 years?

Forbes: “...according to a study performed by Lily Batchelor at NYU, you have a perfect storm in which approximately 7.8 million low-income large families will experience increased tax bills under the Trump plan...”

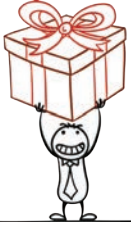
“According to the Tax Policy Center, the totality of the Trump plan will reduce federal tax revenue by \$6.2 trillion over the next ten years. Of those tax cuts, nearly 47% will go to the richest 1%. To put it into dollar terms, those earning less than \$48,400 will experience an annual tax cut of less than \$400, while those earning in excess of \$700,000 will walk away with an average of an extra \$215,000 per year...”

Forbes contributor Tony Nitti, “President Trump: What Does It Mean For Your Tax Bill?” November 2016

Voters can vote on promises and they can change when the prose does not match the impact on the purse (or the pocket). If President-elect Trump delivers on some, if not most, of his promises in a four year cycle, then the probability of an 8 year cycle increases. If not, a minimal reduction or tax increase on many voters increases the probability of a one term president and a 4-year cycle.



So as an estate planner, what would I recommend? There is no clarity regarding gift taxation or generation taxes, and I have little to offer regarding what cycle we might be on for estate taxes and “carryover” basis.



At this point I have only one recommendation. Make gifts for non-tax reasons and, if you do, don't choose low basis securities unless you are making charitable gifts. “Carryover” basis for lifetime gifts has been in effect since 1920 and, rather than death transfers, there is no evidence that the law will change. So if, for example, I give appreciated stock, the gain will be subject to tax when the stock is sold. If, however, I leave the property upon my death, the gain will go away, unless Mr. Trump's proposal passes and I have an estate exceeding \$10 million. So planning my estate is simple. There will be no “carryover” basis. If I were planning estates above \$10 million, I would probably recommend the same thing...whether carryover basis cycles on or off.

Will Vermont's estate tax show a cyclical pattern? It is hard to tell. But those who make gifts to avoid the Vermont Estate Tax and die within two years from the date of the gift will not avoid Vermont's tax and will lose the benefit of the step-up-in-basis.

When I cycle I wear my bike helmet. I sometimes think that my thinning hair is attributable to the helmet. I now think it is from scratching my head.

When I worry about the future, I drink good coffee, and cream.....and no additives that have been through fermentation. I then wait for inspiration.

Déjà vu once again! There is another pattern that just emerged, starting in 1972, that has made my life much easier through many years: we would find the right people to work in our company and life will have less worries. Just keep finding colleagues that do a really good job of taking care of others.

### Our New Colleagues Susan Fowler and Judy Joly

In July, Probate Judge Susan Fowler and Probate Register Judy Joly retired together after a long and impressive career in the Chittenden County Probate Court (Judy Joly for 37 years and Judge Fowler for 22 years). In July, we recognized an opportunity to move quickly, before Susan and Judy had enough time to appreciate the benefits of retirement. In October the team of Susan and Judy joined us. Taking care of others is their specialty:



*“Judge Fowler is being honored for her dedicated work in the field of adoption for the past 25 years,” the CCAI\* wrote. “In her 19 years on the bench, Judge Fowler has presided over more than 1,000 adoptions and has been instrumental in reducing the backlog of cases awaiting finalization after parental rights were terminated in the Family Division. She is recognized for her kindness and compassion in the handling of her cases, whatever the outcome.” - The Burlington Free Press 8/18/2014*

\*“Angels in Adoption” is a public awareness campaign of the Congressional Coalition on Adoption Institute. As Susan point outs, it is the team of Susan and Judy that is being honored.

## Taking Care of.....Family

Angela Bowman, Trust Administrator

*Note: We would like to thank Angela, Chris, Nanette, and their families, for their willingness to share personal stories to encourage others to help family in distress.*



Everyone has a time in their life when they feel compelled to step in and take over. This could be for anything... an illness of a loved one, aging parents, conflicts between friends, an issue at work... the list could go on and on. I have always been a problem solver. Typically, I first observe and do not step in until needed. Other times, I come full force and learn everything there is to know about something and find a solution, or way to combat an issue. Everyone deals with situations on their own terms, but when it comes to caring for parents, family and loved ones, my first rule of thumb is dive in, trust your instincts and question everything.

My dad was diagnosed with cancer on my son's fourth birthday. For my family it was much more than a diagnosis... it was validation of what my dad had thought for the last year... he had cancer. He had some minor health issues, that never seemed to resolve themselves, but the doctors kept saying there wasn't anything wrong. He felt otherwise. My dad, at age 55, was the oldest living male in three generations. His younger brother died of cancer years before, and each year he was thankful that he made it one more year. That being said, he always told us he would get cancer and die young. We always shrugged it off but that day, the day the doctor came in and said he had cancer, we thought

my dad might be right. He was recovering from a hip replacement when we got the news, and I could tell he was ready to give in and up. Instead of letting him, we all reminded him of the reasons to fight. The most important being his five grandchildren.

I also reminded him about my tenacious personality. I learned everything there was to know about the disease and quickly became more than a face to his doctors, and more than a worried daughter to my dad and mom. I became the advocate. I questioned what decisions were being made and always made sure he was more than just another chart to the doctors. There were times when I felt he shouldn't be given a medicine or test and, together with the doctors, worked through a treatment plan. I also became the buffer. My parents have been married over 40 years, but something about them being in a hospital room changed their relationship. Mom needed time for herself outside the hospital and Dad needed to not think about being sick.

It's been 5 years now since we heard my dad had cancer. That first year was definitely hell, but we made it. We know there will be a time when his cancer comes back, but for now we are grateful he is in remission. When the point comes that we need to start again, we are better prepared, and his doctors know what to expect too.

Many times at TCV we work with multiple generations and help not only navigate the complexities of estate planning, but also how to help with aging parents and loved ones. Our clients often struggle with when to step in, when to let others help, and when to question health providers. Having been there, my recommendation is stay involved, go to the appointments, take notes and always ask as many questions as you can. When something doesn't sound or feel right, trust your instincts and stand your ground!

## Taking Care of.....

### Family Finances

Nanette Stevens, Relationship Manager



As our parents move into the later years of life, we assume some important responsibilities as children. One role is to advocate for our parents within the health care system. From my experience, a

second, often concurrent role, is to be a financial advocate.

I was very blessed to have talented entrepreneurs for parents. They managed their lives and finances extremely well. Unfortunately, my mother lost a three-year battle with cancer. It was at the onset of her illness, as health care demands took up more and more of their time and energy, that I sensed they might need some assistance with financial matters. My parents worked hard all their lives to secure themselves and provide their children with wonderful opportunity. They were incredibly generous with all four of their children, both with their time and their resources, while maintaining their own security. When my mother's life was in jeopardy, her main concerns were for my father. Although an intelligent and hard-working man, it had mainly been my mother who had managed the family finances. I felt the need to offer help. Fortunately, my parents were fully competent and willing to accept help. My mom ran budgets and tax information on green sheets all her life. My dad loves technology. At 88 years of age, he has many friends on Facebook, his iPad at his side at all times, and an openness and willingness to learn and explore technological advances.

After my mother passed away 10 years ago, I took pause. I wanted to help, but at the same time knew my dad was a very capable, independent person. While the Trust Company of Vermont could have taken over his bills easily, instead, understanding his love for technology, I im-

mediately set him up with online banking and bill pay. He enjoyed this autonomy and responsibility. Losing my mom after 55 years of marriage presented many challenges. My parents had worked together in business most of their lives. This meant they spent all of their time together, managing their businesses, four children, and my grandmother who lived with them for 35 years until her death. Their life together was a true partnership. A reflection of their lifelong work, as a team, my dad, and his children, were able to get their estate plan in good order. Probate was not necessary upon my mom's death, and with careful planning and foresight, this should also be the case for my dad as well.

Most families can tell stories of an aging parent showing signs of physical or cognitive decline. My own experience is one that has been successful to date, however I offer a few broad recommendations to help with these transitions:

- ✓ Open and early communication, preferably before there are any signs of cognitive decline.
- ✓ Discuss expectations, for example discuss whether parents want to stay at home or move to a condo or senior apartment/assisted living.
- ✓ Make sure your parents have health care directives, durable power of attorney documents, and a will or estate plan.
- ✓ Have your parents prepare a complete financial inventory, including investment accounts, insurance policies and any debt. This may also be an opportune time to meet their financial advisor, attorney, and accountant and request copies of their statements to help monitor.
- ✓ Gather account numbers/online passwords.
- ✓ Review everything annually.
- ✓ If necessary, arrange for caregivers. Make sure to do careful due diligence.

My dad, siblings, and I were all very glad that we worked through all of these recommendations while both of my parents were healthy. Now we all work together as a team to make sure my dad is safe, secure and happy. At 88, he is extremely independent and active, continuing to work as a driver for automobile dealerships. We remain thankful, but also know we need to communicate, visit and review affairs often because things can change very quickly. I have been very fortunate to have a family that works together. At times we have differing views, which can be challenging, however we all share immense gratitude for everything our parents have done for us. It is our turn to give back to them. My mom was reluctant, but graciously accepted our help, and although it is hard to accept help, my dad also knows it is time to give us an opportunity to reciprocate our love and appreciation.



## Taking Care of.....Pets

Jane Waysville, Trust Administrator



One year, we learned an important lesson about pets in an estate plan. It began when an attorney provided us with a copy of the will of an elderly man in his eighties who had recently died and who had nominated our trust department as executor. We needed the original will, but no one knew where it was. Two of us went to the decedent's country home to search for it. We were met at the man's home by his sister, to let us in, and

we were greeted exuberantly by his big dog, a mostly German Shepherd with floppy, hound-dog ears. Duke had been adopted from the Humane Society as a puppy and had lived with his master for five years.



Duke followed me around the rooms as I searched for the will, sticking his head over my shoulder into file cabinets. I thought, if only he could talk, maybe he could tell us where the will is hidden. We didn't find it in the house, but as we left, the sister asked me to do her a favor.

*"I promised my brother that we would take care of the dog," she said, "but he is too big and rambunctious. My husband can barely hold Duke back, and he needs exercise. Would you return Duke to the Humane Society for us?"* I told my husband and son about this friendly, loving dog that had followed me around the house for hours. That weekend, we went to pick up Duke, but we didn't take him to the Humane Society. Instead, we decided to bring him home to our house to live.

The first time we sat down to a meal, Duke sat on the floor beside me and put his big head on the table. He had clearly dined at the table and frequently on "people" food. When we went to bed, he jumped right in the middle of the bed to where he thought he was going to sleep. Duke learned a few new rules, slept by my side of the bed on the floor, and followed me everywhere. When I went hiking, he would run ahead and then back to check on me, covering double or triple the miles. As he got old and his hips started failing, he would stand at the top of the stairs whenever I went down cellar and watch and wait for me. Duke had clearly picked me out as his new person, and he continued to follow me around for almost a decade. I still miss him.

Not all pets are so fortunate to have someone show up on the doorstep and adopt them when their owners die. In planning your estate, you may want to plan for your pets as you would your human family. A new law allows you to do just that.

The 1999 Vermont Trust Code provides for creating a trust for the care of an animal or animals that are alive or in gestation while you are alive. The trust terminates upon the death of the animal – or the last survivor of several animals. In addition to a trustee, a caregiver is usually also named. The probate court may also appoint a person to enforce the trust or to remove a person appointed, if needed. Property of a trust authorized by the statute may be used only as intended. The court can reduce the funding if it determines that the trust has much more money than is needed.

There are many advantages to setting up a trust for Duke, Fluffy, your bird, or your horses. Many relatives or friends are well intentioned, but sometimes such a party finds the care of the animal to be too onerous, as in Duke's situation. Also, though provisions for pets may be made in a will, they are only effective after you die, and there may be a delay until an executor is appointed and money becomes available to take care of your pet. A trust can be set up instead, during your lifetime, so that it can become effective if you become unable to take care of your pet. The document may provide for alternate caregivers. In addition to holding funds, the trust may also provide specific instructions for care, feeding, and housing including veterinarian care, end-of-life care, and cremation or burial. The trustee may be authorized to pay the caregiver an annual bonus for the good health and well-being of your pet, and also have the authority to remove your pet from the caregiver anytime the trustee believes the caregiver is not providing tender and loving care.

How much is a reasonable sum to leave for your pet? It will depend on the animal. For instance, a horse will need more money for its care than will a cat. A young and vigorous animal will require more assets than an aging pet. The matter also depends on whether you want your pet to receive sophisticated treatments or be euthanized at



some point. You determine a reasonable amount – one that won't cause problems with your heirs but which will provide for good care of your pet for a lifetime. Probably the best known example of overfunding is Leona Helmsley's plan. She reportedly bequeathed \$12 million for her little dog Trouble, and a court reduced the sum as excessive.

Consider a trust for your pet in your plans. Don't let the worry of what will happen to your pet keep you from enjoying its company. Pets are best friends and companions who, studies show, can help keep us healthy, and a trust can provide for a smooth transition to another caregiver and home.

*PS. We did eventually find the will. This story prompts another estate planning point – make sure your executor knows where your original will is kept.*

## Taking Care of.....Digital Assets

Chris Chapman, Trust Administrator



Trusts have flexed numerous times over their thousand-year history to adapt to changing times. A new wrinkle in trust law is gradually being adopted as more and more of us do business online with digital accounts.

A model law known by its awkward acronym, RUFADAA, is increasingly seen as a silver bullet to help fiduciaries – meaning trustees, executors, guardians, and holders of power of attorney – to serve the interests of individuals who need them. It is known as the Revised Uniform Fiduciary Access to Digital Assets Act. Although the name is ungainly, the model law is designed to slice neatly through barriers and red tape to help a fiduciary marshal a person's assets from digital records – whether online or on personal computers.

Consider this increasingly frequent scenario: John Doe has gone to some lengths to eliminate paper records



and clutter from his life by setting up all his finances in electronic accounts. Until felled by a health issue, he has balanced his checkbook from his computer, paid all his loans and bills electronically (including his life insurance premiums), maintained his subscriptions, and kept track of his IRA, 401(k) savings, and investment accounts via his computer. And he has kept all his passwords in files no one can access without yet another password. Plus, he hasn't shared the information with anyone, being widowed and living alone.

When overdue notices start to arrive, his family realizes with rising anxiety that they have no way to pay the bills – have no access to John's checking account and don't know how to get a handle on his assets. It wouldn't be until early February that they would know where his earnings come from, as



Form 1099's start arriving only then and serve to clue them in on accounts. When they get that information, they are unable to raise any cash, as they still don't have passwords, and financial services providers refuse to honor John's power of attorney, as its language is too general – and vague on this point.

Here's a real-life example. Not long ago, I tended to my older brother, who was entering the late stages of a long cancer illness and who had named me as his trustee when he put together his estate plan. I recommended that my brother make out a list of his accounts and passwords. He agreed, but the course of events got in his way. Distracted by pain, medications that made him woozy, and a flurry of developments, including visits from relatives and old friends, he did not get around to writing down that information before he took a turn for the worse one day and left us. It took three years of numerous letters and phone calls, despite the help of an attorney (at more than \$150 per hour), for me to liquidate his checking account so that I could add the proceeds to his trust benefiting his children.

It is increasingly common to hear about relatives who cannot convince social media providers to close out their deceased loved ones' accounts. Entirely reasonably, financial services pro-

viders insist on documentation, but often they get bogged down in the manual work needed to deal with automated, electronic accounts and assets.

Recognizing the gravity of this matter, the national Uniform Law Commission has put the RUFADAA together, and twenty states have enacted it. Vermont's Legislature is one of twenty-five more that are gearing up to consider it in 2017.

The model statute allows a person to give legally enforceable directions for the disposition of digital assets in a will, trust, power of attorney, or other written record. Certain aspects of the legislation provide for appropriate access in the absence of any electronic service provider's terms of service.

We recommend that anyone who keeps important information in electronic form think about incorporating provisions for a fiduciary's access at the appropriate time – and that they consult their estate-planning attorneys. Such a simple move could very well help avoid heaping headaches onto heart-break at sensitive times.

## Taking Care of.....Portfolio Assets

Rich Pearce, Portfolio Manager



I've been told that I'm complacent. Maybe, over time, investment managers appear to become complacent, but I think we develop highly effective coping mechanisms so we can stay sane while maintaining the ability to be level headed and rational. We have probably become really good at internalizing stress and, yes, maybe we appear to be complacent.

In preparing for this year-end article I was reflecting on the various events that have occurred so far in 2016. We saw North Korea perform nuclear bomb tests in January, and then more extended tests in September. We watched as the English citizenry voted to remove themselves from the

European Union and most recently the U.S. populace vote to elect Donald Trump as our next president. And just like every year before, there are many more less significant and less memorable events, and each and every one has at least some impact on the financial markets. Each of these events,



small or large, has consequences which can never be fully understood until well after the initial event. This reality is, of course, complicated by the press and over-confident and out-spoken analysts telling us all precisely how the markets will react, the impact on the economy and what our future holds.

And, all the while, we are responsible for managing hundreds of millions of dollars, dollars that in many cases, represent our clients total financial future. As a trust company, we are compelled to manage assets in a prudent and reasonable manner. At TCV this mandate manifests itself as confident, thoughtful, well-researched decisions. Each of these “events” requires, and receives, thorough and thoughtful discussion and any actions taken reflect first and foremost our client objectives.

Taking care of our customers by providing a stable and trustworthy atmosphere in these uncertain times is our goal, we are most definitely not complacent. We are working hard to provide a safe harbor for all our customers.

## Taking Care of...a Resident Trustee

Jack Davidson



Should you discourage a family member residing in Vermont to serve as your trustee when you reside in another state with less taxes? Sometimes we struggle with the difference between a falsehood and a rumor of a falsehood. When a lawyer or accountant states that a trustee residing in Vermont will subject your trust to Vermont income taxes, the

answer is “No”. Addressing a falsehood is a relatively simple 3-step process. First the facts, then the opinions, and then the law.

A rumor, on the other hand, is more complex. In some cases, if the law is clear, you simply publish the law. Here is an extract from Vermont’s official state website defining a trust that may be subject to tax (residency of the trustee is evidently not a factor):

*“A trust is a Vermont resident if:*

- *any portion of the trust consists of property that was transferred to it by a person who was a Vermont resident when the trust became irrevocable; or*
- *the trust is and remains revocable, any portion of the trust consists of property that was transferred to it by a person who was a Vermont resident; or,*
- *any portion of the trust consists of property that was transferred by the will of a Vermont domiciled decedent.*

*A tax return must be filed for every estate and trust required to file federal Form 1041, U.S. Income Tax Return for Estates and Trusts and:*

- *that earned or received more than \$100 of Vermont income or*
- *received \$1,000 or more in gross income from the sources listed under Vermont portion on Schedule E.”*

Note: A grantor of a revocable trust who is trustee does not need to file a federal form 1041. If the trustee is not the grantor, the trustee needs to file a simple return reporting all income to the grantor. The tax jurisdiction of the grantor will determine the tax.

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