



# The Undiscovered Country

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Opportunities for Wealth Preservation and Planning for Business Entities,  
Individuals and Trusts Having a Situs in the State of Wyoming

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*The information contained herein is for informational purposes only, and is not legal advice  
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# New Notoriety for Wyoming

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- ▶ A leading trade publication, *Trusts and Estates*, noted Wyoming as among the best jurisdictions to locate a trust or limited liability company.

Daniel G. Worthington & Mark Merric, *Which Situs is Best?*, TR. & EST., Jan. 1, 2010, updated; Jan, 2012

- ▶ 2<sup>nd</sup> Lowest Overall Tax Burden.

<http://www.taxfoundation.org/research/show/27181.html>

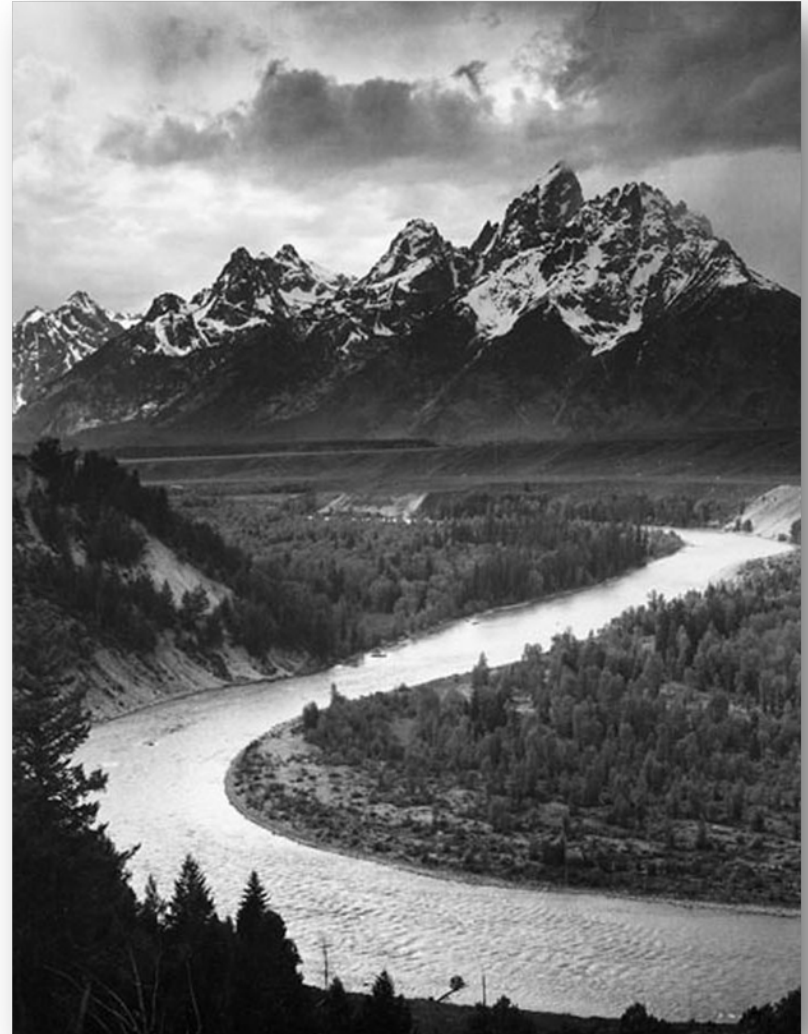
- ▶ 3rd best in the Tax Foundation's State Business Tax Climate Index

<http://www.taxfoundation.org/research/topic/68.html>

- ▶ 4th best tax system for small business and entrepreneurship

Small Business & Entrepreneurship Council

<http://www.sbecouncil.org/news/display.cfm?ID=4316>



# The Wyoming Advantage

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- ▶ **Low state tax burden**
  - ▶ No individual, corporate, or trust income tax
  - ▶ No gift tax
  - ▶ No tax on out-of-state retirement income
  - ▶ No tax on mineral ownership or intangibles
  - ▶ Low property tax
  - ▶ Wyoming Constitution art. 15 § 18 makes future income tax unlikely
- ▶ **Expansion of the Rule Against Perpetuities**
- ▶ **Strong asset protection laws**
- ▶ **Favorable business entity laws, including innovative LLC statutes**
- ▶ **Modern trust laws**





# Why No Tax? Minerals

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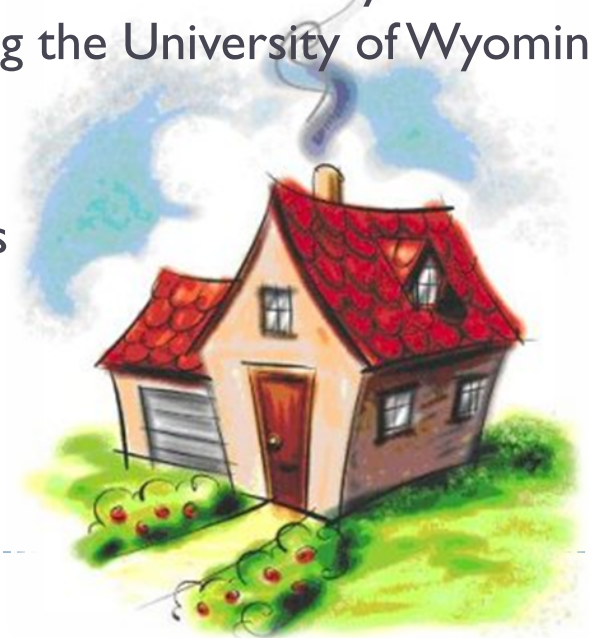
- ▶ Largest Coal Producer in US
  - ▶ Also large producer of oil, natural gas, and wind
- ▶ \$878.7 million in mineral severance tax collected in FY 2009 (collected by state)
- ▶ \$1.85 billion ad valorem property taxes collected from mineral taxpayers in FY 2009 (collected by county)
- ▶ \$835.9 million: Wyoming's share of Federal Mineral Royalties in FY 2009 (collected by Federal govt, but half remitted to state)
- ▶ \$213.6 million in coal lease bonuses in FY 2009
- ▶ Permanent Wyoming Mineral Trust Fund
  - ▶ \$4.26 billion as of June 2009



# Moving to Wyoming

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- ▶ Individuals must come to Wyoming with *intent* to establish domicile (permanent place of abode)
- ▶ Actions that help effectuate a residency change include:
  - ▶ Purchase or rent home
  - ▶ Send and receive mail
  - ▶ Conduct estate planning, including locating the “family office” in state
  - ▶ Obtain services from a local accountant, lawyer, barber, dentist, M.D.
  - ▶ Serve on the board of a Wyoming corporation or local charity
  - ▶ Make distributions to local charities, including the University of Wyoming
  - ▶ Obtain primary cell phone provider
  - ▶ Hold professional licenses and memberships
  - ▶ Prepare and send federal income tax returns
  - ▶ Relocate financial accounts
  - ▶ Receive primary income
  - ▶ Register and Vote



# The Wyoming LLC Advantage

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- ▶ Wyoming was first state to authorize LLCs in 1978
- ▶ Remains competitive with new 2010 LLC Act
- ▶ Privacy: number and names of members and managers, amount and nature of capital contributions, etc.
- ▶ Flexible operating agreements based on contract law
- ▶ Sole charging order remedy

See Dale W. Cottam, Thomas N. Long, Scott W. Meier, Timothy O. Beppler & Whitney M. Agopian, *The 2010 Wyoming Limited Liability Company Act*, 11 WYO. L. REV. 49 (2011).



# Determining the Governing Law: Business Entities

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- ▶ **Corporations, LLCs, and limited partnerships**
  - ▶ Typically governed by state laws authorizing their creation
  - ▶ But subject to judicial jurisdiction in states in which they have minimum contacts
- ▶ **Articles of Incorporation and statutes allow residence to move**
- ▶ **Residence depends on**
  - ▶ Office location
  - ▶ Primary place of business



# Moving a Business Entity to Wyoming

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## ▶ Domestication

- ▶ Corporations W.S. §§ 17-16-1801 to -1802
- ▶ LLCs W.S. §§ 17-29-1012 to -1013

## ▶ Continuance

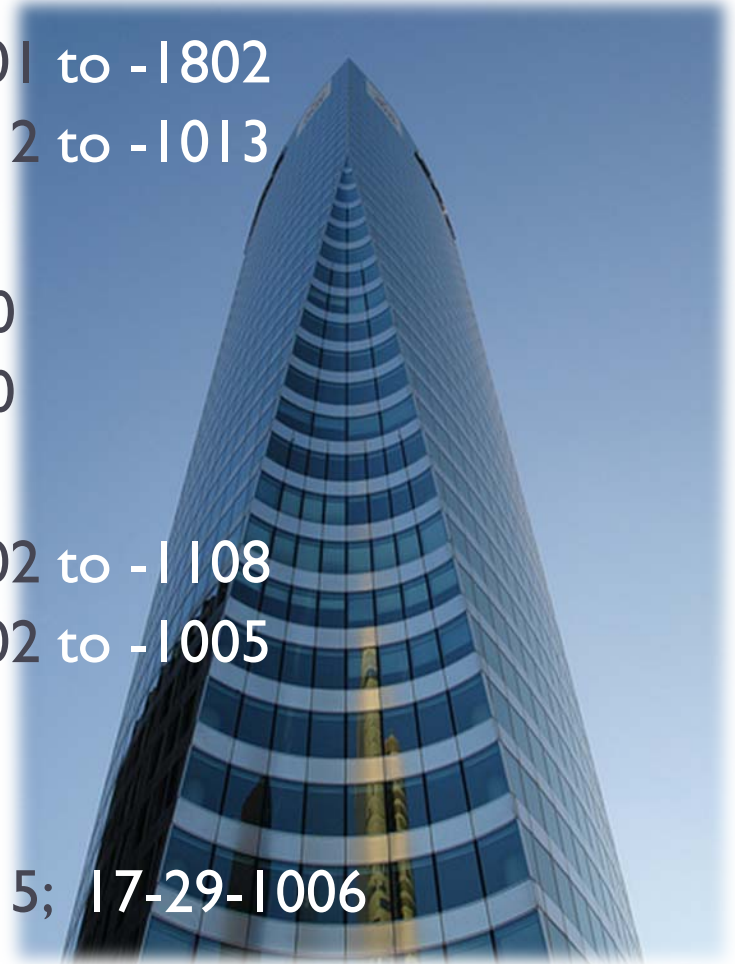
- ▶ Corporations W.S. § 17-16-1810
- ▶ LLCs W.S. § 17-29-1010

## ▶ Merger

- ▶ Corporations W.S. §§ 17-16-1102 to -1108
- ▶ LLCs W.S. §§ 17-29-1002 to -1005

## ▶ Conversion

- ▶ Corporations W.S. § 17-26-101
- ▶ LLCs W.S. §§ 17-16-1115; 17-29-1006





# Advantages of Wyoming Trusts

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- ▶ **Modified Uniform Trust Code (W.S. § 4-10-101 *et seq.*)**
- ▶ **Near Perpetual Trusts**
  - ▶ Non-real property interests held in trusts opting out of Rule Against Perpetuities can last for 1,000 years outside federal transfer tax regime (W.S. § 34-1-139)
  - ▶ Wyoming Constitution prohibits outright repeal of Rule Against Perpetuities (Wyo. Const. art. I, § 30)
- ▶ **No Tax on Income or Capital Gains**
- ▶ **Efficient, responsive, and friendly legislature and courts**
- ▶ **Privacy:**
  - ▶ No mandatory trust registration
  - ▶ LLC statute (W.S. §§ 17-29-203, -301, -302)



# Innovative Trust Tools

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- ▶ Directed Trusts (W.S. § 4-10-712)
- ▶ Trust Protectors (W.S. § 4-10-710)
- ▶ Unregulated Special Purpose Entities (W.S. § 4-10-710)
- ▶ Purpose Trusts without Beneficiaries (W.S. § 4-10-410)
- ▶ Flexible Migration Procs. (W.S. §§ 4-10-108, -202, -417)
- ▶ Reformation and Modification (W.S. §§ 4-10-411 to -418)
- ▶ Decanting (no statute, arguably available at common law)
- ▶ Virtual Representation (W.S. § 4-10-304)

See Christopher M. Reimer, *The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction*, 11 WYO. L. REV. 165 (2011).



# Asset Protection (client is beneficiary)

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- ▶ **Wyoming Qualified Spendthrift Trusts (WQSTs)**
  - ▶ AKA Asset Protection Trusts or Self-settled Spendthrift Trusts
  - ▶ Restrains settlor's ability to direct trust assets, preventing creditors from attaching trust assets
  - ▶ One of only twelve states with statutes changing common law rule that settlor can't create spendthrift trust for own benefit (W.S. § 4-10-510)
  - ▶ Must be irrevocable, but Wyoming permits settlor to retain broader powers and interests than other states (*Id.*)
  - ▶ Only three exceptions: certain secured, child support, and fraudulent transfer claims (W.S. § 4-10-520)
  - ▶ Unanswered constitutional questions: Full Faith and Credit
- ▶ **State income tax planning**



# Estate/Gift Planning (children are benes)

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## ▶ Temporary Gift Exemption

- ▶ Every person can give \$5 million until 12/31/12; after which it is scheduled to return to \$1 million
- ▶ Dynasty Provisions
- ▶ Private Trustee (private trust company)





# Private Trust Companies

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- ▶ Regulated & Unregulated
- ▶ Permit families to guard wealth, utilize financial parenting, and maximize flexibility of trust administration
- ▶ State regulation: One of only two states permitting truly unregulated private trust companies (W.S. §§ 13-5-101 to -104, 13-1-101(xv); 1993 Att’y Gen. Opinion)
- ▶ Federal Regulation
  - ▶ Dodd-Frank Act eliminated old private adviser exemption to SEC investment adviser registration under Investment Advisers Act of 1940 (Pub. L. No. 111-203)
  - ▶ But SEC has promulgated rules exempting “family offices” from definition of “investment advisers” (17 C.F.R. § 275.202(a)(11))



# Migrating an existing Trust to Wyoming

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- ▶ Three general means of moving a trust
  - ▶ Distribute assets to beneficiaries who create Wyoming trusts
  - ▶ Trustee exercises limited power of appointment to appoint assets in further trust (aka “decanting”)
    - ▶ Some states’ statutes permit, codifying trustees’ common law power
      - E.g., Rashad Wareh, *Trust Remodeling*, TR. & EST., Aug. 2007, at 20.
    - ▶ Trust instrument may authorize decanting
  - ▶ Former trustee resigns and new Wyoming trustee (possibly a private trust company) appointed to administer assets
- ▶ Trust instrument may provide procedures
- ▶ Various states offer statutory and judicial procedures
- ▶ Wyo. UTC simplifies change of governing law
  - ▶ See W.S. §§ 44-10-107, -108, -113, -202, -413.



# Conclusion

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► Questions?

