First of all, please allow our disclaimers. We are NOT tax attorneys, IRS agents nor CPAs. We would strongly urge you to check our concepts, calculation and references with your own advisors. If there is a conflict we would appreciate constructive feedback so we can address potential problems before they arise.

Color Coding - Red, Green, Bold Black (Direct quote from IRS documents), Violet and Blue (Our comments)

First understand that tax issues are only part of the full benefits of ownership of a beneficial interest in a trust. Beneficial interests are the same for all beneficiaries and include a proportionate share of income, appreciation, expense deductions, right of purchase of the property, transferability, and the right to use the beneficial interest as personal property securing financing against it just as you would finance a car or boat. We will address only the taxation issues here.

The Dirty Dozen
The IRS urges people to avoid these common schemes:

1. Trust Misuse. Unscrupulous promoters for years have urged taxpayers to transfer assets into trusts. They promise reduction of income subject to tax, deductions for personal expenses and reduced estate or gift taxes. However, some trusts do not deliver the promised tax benefits, and the IRS is actively examining these arrangements. More than two dozen injunctions have been obtained against promoters since 2001, and numerous promoters and their clients have been prosecuted. As with other arrangements, taxpayers should seek the advice of a trusted professional before entering into a trust.

Persons who suspect tax fraud can call the IRS at 1-800-829-0433.

The Dirty Dozen is a generalized list of the types of tax schemes that should be avoided. #1 on their list is Trust Misuse. It doesn’t state trusts are schemes, but the misuse of trusts are. Misuse of a trust is state above - basically the attempt to take personal exemptions or other non-acceptable tax deductions. The law is fairly explicit in defining actual expenses associated with a bonafide income producing asset are clearly deductible. Each trust is established on one of two basis, described in #2 at the beginning of this document. It is important NOT to mix the two. Doing so would be a misuse of the tax code and subject to penalty. Whether a business is owned by an individual, partnership, corporation, or trust, they all are subject to the same laws and economic benefits. In the case of partnerships, corporations, and trusts, they are legal entities that pass through the economic benefits to their respective owners according to the share of ownership. The three differ in their legal structure and in their ability to shield the underlying assets from adverse actions against the individual owners.
There are several issues regarding tax consequences of land trusts.

1. Are there deductions that can be taken regarding the property within a land trust?
2. What deductions may be taken and why?
3. Are those deductions passable and transferable through the trust to the beneficiaries?
4. Is there a special classification of beneficiary that is able or not able to take deductions?
5. How do specific deductions accrue to each beneficiary?

Let’s take each questions in order.

1. There are two types of deductions that can be taken on any real estate regardless of how title is held. Active deductions are those normally listed as interest, taxes, and other allowable and paid for irregular expenses and sometimes written as (ITI-P) not counting the principle reduction on mortgages. Passive deductions are commonly considered those costs that are NOT directly paid for but do accrue over time as an expense on the property. The most common is depreciation. In order for depreciation to be taken, the property must be used for income production. In the IRS tax code, 

Therefore, if the property is being leased, it is possible to deduct both active and passive deductions, including depreciation.

2. There are two basic and different situations that must be considered. One, the original owner deeding the property to a land trust (Settlor Beneficiary or SB) will continue to live in the property. Two, the SB will move out of the property and allow a non-owner (Resident Beneficiary or RB) to rent or lease the property, thus producing an income producing situation. In the first case, only the active deductions may be taken (ITI-P) since the IRS expressly excludes depreciation on renting a property from yourself or any entity that you control. The second allows both active and passive deductions, including depreciation. A key issue here is the individual exemption from the capital gains on the sale of a personal residence. To qualify for the $250,000 single or $500,000 exemption from capital gains on the sale of a personal residence, the buyer must have owned and lived in the property for a minimum of 730 days (doesn’t not have to be continuous) or equal to 2 years of the last 5 years. If a property is transferred to a trust, rented and continues to be rented for more than 3 years before sale, the capital gain exclusion can be denied or reduced depending on the circumstances of the original sale. There are “safe harbor” circumstances that can extend this 3-year window. In addition, if the original owner regains nothing at the final sale except release from the current debt service, there is no capital gain to the original owner. Bear in mind, that this capital gain is only on the actual appreciation above the basis of the original purchase of the property. Hence, no gain, no tax. Also, in the second circumstance, any depreciation taken can lower the tax basis for the determination of the capital gain on the property. “Use it or Lose it” refers to the ability of the IRS to a lower basis regardless of whether the depreciation is actually taken by the tax payer or not.

An additional issue is - does the date of transfer into or out of a trust have any bearing on the above issues. No. The transfer into a trust is considered by federal law to be a non-transfer of title for purposes of triggering Due-On-Sale clauses by the Garn-St. Germaine Act and subsequent court decisions. The actual date of sale is not until sale and transfer out of the trust.

In other words, if an individual uses a land trust and continues to live in the property, the active (ITI-P) can be available to the beneficiaries of the trust. If the individual moves out, depreciation may be added to those deductions. The original seller will only have a capital gain tax due on the appreciable gain above the depreciated basis of the property after depreciation, sale expenses, and debt repayment. A deduction of $250,000 may be taken by an individual or $500,000 per married couple if that occurs during the first three years of the trust.

Sec. 167. Depreciation, TITLE 26, Subtitle A, CHAPTER 1, Subchapter B, PART VI, Sec. 167 states:
(a) General rule
There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) -
(1) of property used in the trade or business, or
(2) of property held for the production of income.
3. Specific language to land trusts transference of tax deductions is not available, however, there is Tax Code which addresses a very similar situation. Cooperative housing corporations, normal business corporations and land trusts are all similar in the fact that they provide a non-divisible interest in the ownership of a legal entity whose value is based on the underlying asset of that legal entity.

Here it clearly shows that the active deductions can pass through the legal entity to the non-divisible shared interest owners of the legal entity holding title to the property. In another example, normal corporate tax code defines which expenses, including both active and passive deductions, can be passed through to the shareholders. The expenses, including deductible depreciation, is accounted for in the total financial statement of the corporation to arrive at a final value (profit or loss) which can be passed to the shareholders as a dividend. That dividend is AFTER all deductions from all income.

On the same basis, the land trust trustee is not accorded ownership rights and is restricted from accruing such benefits from his or her function as trustee. Since those ownership rights must be provided for, they are passed through the trust to the beneficiaries of the trust.

In addition to the above listed normal active deductions, Section 216 expressly states that the amount of the property being utilized for income production may accord depreciation according to section 167(a) if it meets the definition listed at the beginning as a depreciable asset.

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Sec. 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

TITLE 26, Subtitle A, CHAPTER 1, Subchapter B, PART VII, Sec. 216.

(a) Allowance of deduction

In the case of a tenant-stockholder (as defined in subsection (b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of -

1. the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or
2. the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted -
   A. in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or
   B. in the acquisition of the land on which the houses (or apartment building) are situated.

(c) Treatment as property subject to depreciation

1. In general

So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under section 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.
4. Within the same section 216 above is the following:

By reading this closely, it is seen that a land trust meets all the requirements of a “cooperative housing corporation”. There is only one class of beneficiary. Although different designations may accrue to different beneficiaries for identification purposes, all have the exact same rights, benefits and responsibilities. This is spelled out within the Beneficiary Agreement. No special class of beneficiary has the right to terminate the trust, occupy the dwelling or receive proceeds from the trust except as specified by that Beneficiary Agreement ratified by and changeable only by all beneficiaries in agreement. The gross income comes solely from the rental of the property within the trust. The actual physical occupancy is a separate outside agreement between the trust, through the trustee, and the occupant which may be any of the beneficiaries, or in case none desire it, an outside-the-trust occupant.

5. Now how much of the above active and passive deductions may be taken by a person holding a non-divisible interest in a “cooperative housing corporation” or land trust?

(b) Definitions
For purposes of this section -

(1) Cooperative housing corporation
The term “cooperative housing corporation” means a corporation -
(A) having one and only one class of stock outstanding,
(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,
(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and
(D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders.

(2) Tenant-stockholder
The term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

(3) Tenant-stockholder's proportionate share
(A) In general
Except as provided in subparagraph (B), the term "tenant-stockholder's proportionate share" means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

In addition,

Essentially, that portion of beneficial interest is the amount of deductions, income, or other benefits that a particular “tenant-shareholder” or beneficiary may receive.
Losses From Rental Real Estate Activities

There are three more issues to consider, At Risk Limitation on tax deductions, Active versus Passive Activity to qualify for deductions beyond the At Risk Limit amount, and your ability to apply deductions and what benefits you may receive.

In IRS Publication 925 it talks about the first two issues, but discusses them in reverse order. It warns briefly that a taxpayer must first apply the At Risk Limits to their losses BEFORE they can consider the Active versus Passive participation for the $25,000 special allowance offered. Then it goes on to discuss in detail the Active versus Passive participation definitions with examples. The examples given in the publication are clear in stating that even though the At Risk Limits were exceeded, it was because the tax payer met the requirements for Active participation that they were able to use them. After the above discussion it then goes into detail about the limits without making any statement as to what to do with the excess losses beyond the At Risk Limits. However, the key is the CAUTION on page two of the publication just prior to the discussion on Active versus Passive participation. Let’s look at how this is structured.

At Risk Limits and Rules

In other words, If you are as described, you must determine the amount of your at risk limit BEFORE you can apply any disallowed deduction to the active versus passive status for further allowance of deductions. i.e. if your investment was $10,000 but your percentage of deductions from the trust are $12,000, your at risk limit is the initial $10,000. However BEFORE you can take the additional $2,000 in deductions, you must qualify for the Active Participation status.

Assessing the Activity Level

The IRS Pub. 925 discusses the levels of activity (rental of the property for income purposes). It defines rental activity as passive in nature. It states that if you actively participate in the activity you are allowed up to $25,000 in deductions against other non-passive income.

The IRS goes on to define Active Participation.

Within a trust, an Investor Beneficiary must have a 10% beneficial interest and be a part of the decision process as described in the definition. This is done by having the property management see to the day to day requirements, but all decisions as stated are placed before ALL of the beneficiaries for their approval, disapproval or comment. This is done through normal correspondence to provide a paper trail of the decision process.

Government Publication 925 Quotes

The at-risk limits apply to individuals, partnerships, S-Corporations, estates, trusts and certain closely held corporation (other than S corporations) Defined as 5 or fewer stock holders

(in the section concerning Active versus Passive Participation)

Before applying this limit on passive activity losses, you must first determine the amount of your loss disallowed under the at-risk rules explained in the second part of this publication.

Special $25,000 Allowance. If you or your spouse actively participated in a passive rental real estate activity, you can deduct up to $25,000 of loss from the activity from your nonpassive income. This special allowance is an exception to the general rule disallowing losses in excess of income from passive activities.

Active participation. You actively participated in a rental real estate activity if you (and your spouse) owned at least 10% of the rental property and you made management decisions in a significant and bona fide sense. Management decisions include approving new tenants, deciding on rental terms, approving expenditures, and similar decisions.

Closely held corporation. A closely held corporation can offset net active income with its passive activity loss. It also can offset the tax attributable to its net active income with its passive activity credits. However, a closely held corporation cannot offset its portfolio income (defined later, under Passive Activity Income) with its passive activity loss.
Qualified corporations are defined as described and can be made up of closely held corporations, which would then exempt them from the At Risk Rules.

To determine whether the corporation is a personal service corporation, you must determine whether; 1) any "employee-owners" owned more than 10 percent of the stock, 2) the principal purpose of using the personal service corporation is the avoidance or evasion of Federal income tax by reducing income or increasing deductions that would not otherwise be available; and 3) it is determined that the corporation is designed for the avoidance or evasion of Federal income tax.

Note that safe harbor protection is provided for certain personal service corporations under Proposed Treas. Reg. section 1.269A-1(c). Generally, a personal service corporation will be deemed not to have been formed or availed of for the principal purpose of avoiding or evading Federal income taxes if the reduction in Federal income tax liability of each employee-owner does not exceed certain amounts.

Special exception for qualified corporations. A qualified corporation is not subject to the at-risk limits for any qualifying business carried on by the corporation. Each qualifying business is treated as a separate activity.

**Qualified corporation.** A qualified corporation is a closely held corporation, defined earlier, that is not:

- A personal holding company, or
- A personal service corporation (defined in section 269A(b) of the Internal Revenue Code, but determined by substituting 5% for 10%).

**Qualifying business.** A qualifying business is any active business if all of the following apply.

1. During the entire 12-month period ending on the last day of the tax year, the corporation had at least:
   a. One full-time employee whose services were in the active management of the business, and
   b. Three full-time nonowner employees whose services were directly related to the business. A nonowner employee is an employee who does not own more than 5% in value of the outstanding stock of the corporation at any time during the tax year.

2. Deductions due to the business that are allowable to the corporation as business expenses and as contributions to certain employee benefit plans for the tax year exceed 15% of the gross income from the business.

3. The business is not an excluded business. Generally, an excluded business means equipment leasing as defined, earlier, under Exceptions for equipment leasing by a closely held corporation, and any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical or similar properties.

To summarize the above, if you are subject to the At Risk Limits you’re allowed to deduct up to the amount of your payment for your beneficial percentage. If you then qualify as an active participant, you then have up to an additional $25,000 that you may deduct as use of the disallowed deductions. If your income is greater than $100,000 that Special allowance is reduced by $1 for every $2 of income in excess of $100,000, i.e. If you have the above example of $10,000 that is your At Risk Limit, but if your are an Active participant, you are allowed up to another $25,000 in deductions in excess of the At Risk Limit until your Adjusted Gross Income is $150,000, at which point none of the Special Allowance is left to use.

If you are a qualified business or a non-closely held corporation, you can directly offset active income through the deductions you may have attributable to your beneficial interest percentage.
Tax Rate Schedule

There are three basic tax schedules to determine your potential tax consequences - Individual, corporation, and qualified personal service corporation.

Most corporations figure their tax by using the following tax rate schedule.

### Tax Rate Schedule

<table>
<thead>
<tr>
<th>If taxable income (line 30, Form 1120, or line 26, Form 1120-A) is:</th>
<th>Tax is:</th>
<th>Of the amount over—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over—</td>
<td>But not over—</td>
<td></td>
</tr>
<tr>
<td>$0</td>
<td>50,000</td>
<td>15%</td>
</tr>
<tr>
<td>50,000</td>
<td>75,000</td>
<td>$7,500 + 25%</td>
</tr>
<tr>
<td>75,000</td>
<td>100,000</td>
<td>13,750 + 34%</td>
</tr>
<tr>
<td>100,000</td>
<td>335,000</td>
<td>22,250 + 39%</td>
</tr>
<tr>
<td>335,000</td>
<td>10,000,000</td>
<td>113,900 + 34%</td>
</tr>
<tr>
<td>10,000,000</td>
<td>15,000,000</td>
<td>3,400,000 + 35%</td>
</tr>
<tr>
<td>15,000,000</td>
<td>18,333,333</td>
<td>5,150,000 + 38%</td>
</tr>
<tr>
<td>18,333,333</td>
<td>—</td>
<td>35%</td>
</tr>
</tbody>
</table>

Without providing the entire tax table, the following generally apply:

### Individual Tax Rate

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Income Greater than</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single individual</td>
<td>$30,650 - $74,199</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>$74,200</td>
<td>28%</td>
</tr>
<tr>
<td>Married Filing Jointly or Qualifying Widow(er)</td>
<td>$61,300 - $123,699</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>$123,700</td>
<td>28%</td>
</tr>
<tr>
<td>Married Filing Separately</td>
<td>$30,650 - $61,849</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>$61,850</td>
<td>28%</td>
</tr>
<tr>
<td>Head of Household</td>
<td>$41,050 - $105,999</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>$106,000</td>
<td>28%</td>
</tr>
</tbody>
</table>

### Depreciation

What depreciation can you take? the IRS provides accelerated depreciation schedules but states directly that straight line depreciation must be taken on residential rental property. This can be done over either 27.5 or over 40 years. The 27.5 year SL allows a 3.63% of the depreciable improvements (not land) to be deducted each year. In fact, the IRS states that you MUST take it even if you don’t need it or they will apply it when you sell and charge you taxes on it’s recovery even if you never used the tax benefits of the deductions.

### Residential rental property.

You must use the straight line method and a mid-month convention for residential rental property.

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**Qualified personal service corporation.**

A qualified personal service corporation is taxed at a flat rate of 35% on taxable income. A corporation is a qualified personal service corporation if it meets both of the following tests.

1. Substantially all the corporation’s activities involve the performance of personal services (as defined earlier under Personal services).
2. At least 95% of the corporation’s stock, by value, is owned, directly or indirectly, by any of the following.
   a. Employees performing the personal services.
   b. Retired employees who had performed the personal services.
   c. An estate of the employee or retiree described above.
   d. Any person who acquired the stock of the corporation as a result of the death of an employee or retiree (but only for the 2-year period beginning on the date of the employee’s or retiree’s death).
What Does This Boil Down To?

For illustration we will use the following assumptions.

1. A property is originally bought for $500,000 by a seller now putting the property into a trust for rental purposes for a mutually agreed value (MAV) of $700,000 (We live in Los Angeles).
2. The tax assessor has recorded at the county recorder’s office that 20% of the property value is attributable to land and 80% is for improvements.
3. The current debt service is three years old and is still predominantly interest. The full PITI is $4,500 per month of which only $500 is principle reduction. (ITI-P = $4,000 per month)
4. The tenant is on a triple net lease and there are no further expenses on the property or trust.

This is how the numbers break down.

1. As an income producing property, straight line depreciation is taken on a 27.5 year basis. This is on the original basis of $500,000 x 80% x (1.00 / 27.5) or $400,000 x 3.63% = $14,520 per year.
2. The (ITI-P) = $4,000 x 12 = $48,000 per year.
3. $14,520 + $48,000 = $62,520 or approximately $62,500 in tax write offs or deductions per year for the first several years (not considering interest reduction on a reducing principal amount).
4. If a beneficiary has a 50% beneficial interest then 50% of that $62,500 would equal $31,250 in tax deductions credited to that beneficiary.
5. Each investor must determine their share of that total deduction and determine their tax consequence based on their tax bracket. A simple example would be a 25% personal or a 35% corporate tax bracket. This would yield an approximate $7,812.50 or $10,937.50 net reduction in tax for each year.

1. Current mutually Agreed Value = $700,000
2. Original Purchase 3 year ago - $500,000
3. Tax basis $500,000 x 80% = $400,000
4. Current payment tax deductions / year = $48,000
5. Depreciation / year = $14,520
6. Total deductions = $48,000 + $14,250 = $62,520
7. Round off down to average per year = $62,500
8. Future Sale @ 5% appreciation / yr. = $800,000

50% Beneficial Interest = $31,250 per year

The above is based on clear accounting and tax principles defined and controlled by the IRS. It has nothing to do with positive or negative income or whether the value of the property goes up or down. Let’s see how those numbers would give a final picture to the 50% investor above. There are three scenarios. We are going to assume that the investor paid $7,000 for his beneficial interest for that year.
**Scenario 1. Full year term on a negative cash flow property.**

Since there is no positive income to report, the only declarable numbers are the above stated tax deductions. The above investor would gain an after tax return of $812.50 (approx. 12%) which would equate to a 25% pre-tax return.

**Scenario 2. Full year term on a positive cash flow property.**

A positive cash flow will result in a recovery or balance against some of the tax deductions and costs. For example, if the positive cash flow was $200 per month x 12 months = $2,400 per year. The deductions above would be reported along with a $2,400 x 50% = $1,200 income for that year. The net would be $31,250 - $1,200 = $30,050 in total deductions balanced against other income for an after tax return of $7,512. The above investor would gain an after tax return of $512 (approx. 8.75%) which would yield a 17.5% pre-tax return.

**Scenario 3. Partial year term with sale of the property during that year.**

Sale of the property for $800,000 after 3 years of ownership. Closing expenses and mortgage payoffs are estimated at $400,000 (mortgage reduction is offset by costs of sale). The gross $87,600 depreciation recapture for a net $312,400. Since the original owner had an equity value of $300,000 at the time of set up of the trust that is returned to him. The remaining $12,400 is divided among the beneficiaries based on the beneficial interest. Our 50% investor would receive $6,200 of that as profit on his purchase of that beneficial interest. This would be reported as long term capital gain.

Now let’s computed the partial year income and deductions associated with ownership leading up to the date of sale. Simplistically that would be approximately $2,600 per month ($31,250 / 12 = $2,604) in tax deductions for each month prior to the sale. Profit for that year would be based on the profit from the sale minus the purchase price of the beneficial interest stated above ($6,200 - $7,000 = -$800) then add to that the amount recovered from the 6 months of deductions at $2,600 x 25% = $650 tax return per month x 6 months = $3,900. -$800 + $3,900 = $3,100 which is a 44% net profit after tax or 88% before tax return. This is based on a cash flow negative or flat income.
There is an interesting and accurate brochure published by the IRS titled “Too Good to be True Trusts”. It is available by calling 1-800-829-0433 and requesting Publication 2193 (Rev. 7-2002) directly from the IRS. We would like to take the opportunity to deal with the various issues involving trusts.

Recognizing a problem trust. Taxpayers should look for the following common warning signs that may reveal an unscrupulous trust promotion:

- A promise to reduce or eliminate income and self-employment tax.
- Deductions for personal expenses paid by the trust.
- Depreciation deductions on an owner’s personal residence and furnishings.
- High fees for trust packages, to be offset by promised tax benefits.
- Use of back-dated documents.
- Unjustified replacement of trustee.
- Lack of an independent trustee.
- Use of post office boxes for trust addresses.
- Use of terms such as pure trust, constitutional trust, sovereign trust, or unincorporated business organization.

False Claim: Establishing a trust will reduce or eliminate income taxes or self-employment taxes.
Truth: Taxes must be paid on the income or assets held in trust, including the income generated by property held in trust. The responsibility to pay taxes may fall to either the trust, the beneficiary or the transferor. The trusts we create pass the benefits and losses to the beneficiaries and thus the responsibility. At the end of each year, the trustee will have an accountant, experienced in trust returns, compute and provide proper forms and documents to the trustee for distribution to the beneficiaries for this purpose.

False Claim: You will retain complete control over your income and assets with the establishment of a trust.
Truth: Under legal trust arrangements, you must give up significant control over income and assets. An independent trustee is designated to hold legal title to the trust assets, to exercise independent control over the trust, and to manage the trust. The trustee does NOT have independent ability to act without guidance. The trustee must follow the directions of the beneficiaries as set forth at the beginning of the trust or as amended by agreement of ALL the beneficiaries. To do otherwise, places the trustee in opposition to his or her legal fiduciary responsibilities and may subject him or her to criminal action.

False Claim: Taxpayers may deduct personal expenses paid by the trust on their tax return.
Truth: Non-deductible personal living expenses cannot be transformed into deductible expenses by virtue of assigning assets and income to a trust. We do not attempt to do this illegal action.

False Claim: Taxpayers can depreciate their personal residence and furnishings and take them as deductions on their tax return.
Truth: Depreciation of a taxpayer’s residence and furnishings used solely for personal use is not deductible by virtue of assigning the residence to a trust. Taxpayers must take responsibility for their own actions. Should a taxpayer choose to participate in a fraudulent trust
scheme, the taxpayer will not be shielded from potential civil and criminal sanctions. Fraudulent trust arrangements. Don’t be misled by the word “trust.” Just because the name “trust” is associated with financial arrangements does not make it a legitimate trust. The following arrangements have been used to promote fraudulent trust schemes: This is specific to depreciation. We do not set land trusts up with the owner continuing to live in the property to allow any more than the allowable interest, taxes and other allowable expenses of ownership to pass to the beneficiaries. However, by virtue of being a trust, those allowable deductions can pass to the beneficiaries of the trust according to the statutes within IRS Code 671 noted above.

1. **Business Trust:** This involves the transfer of an on going business to a trust. Also called an unincorporated business organization, a pure trust or a constitutional trust, it makes it appear that the taxpayer has given up control of his or her business. In reality, however, through trustees or other entities controlled by the taxpayer, he or she still runs day-to-day activities and controls the business’ stream of income. Such arrangements provide no tax relief. We do not do these.

2. **Equipment or Service Trust:** This trust is formed to hold equipment that is rented or leased to the business trust, often at inflated rates. The business trust reduces its income by claiming deductions for payments to the equipment trust. This type of arrangement has the same pitfalls as the business trust. It provides no tax relief. We do not do these.

3. **Family Residence Trust:** Taxpayers transfer family residences, including furnishings, to a trust, which sometimes rents the residence back to the taxpayer. The trust deducts depreciation and the expenses of maintaining and operating the residence including, pool service and utilities. These expenses are not deductible and the IRS will disallow them. We do NOT have the trust pay those expenses. Only allowable tax deductions accruable to a personal return are passed through the trust to the beneficiaries.

4. **Charitable Trust:** Taxpayers transfer assets or income to a trust claiming to be a charitable organization. The trust or organization pays for personal, educational, and recreational expenses on behalf of the taxpayer or family member. The trust then claims the payments as charitable deductions on its tax returns. These alleged charitable organizations often are not qualified and have no IRS exemption letter. Therefore, contributions are not deductible. We do not do these.

5. **Foreign Trust:** These trusts often are located in foreign countries that impose little or no tax on trusts and also provide financial secrecy. Typically, abusive foreign trust arrangements enable taxable funds to flow through several trusts or entities until the funds are ultimately distributed or made available to the original owner. The trust promoter claims that this distribution is tax-free. In fact, the income from these arrangements is fully taxable. We do not do these.

**Our ultimate goal is to be both safe and profitable.**

Nothing can guarantee a profitable return of a given percentage, except for a few government backed low-interest securities. We have done our due diligence and now it is your turn to do so.

We hope this has been helpful in your understanding of what the various economic benefits of a land trust are.