

Disclaimer

This flowchart has been extensively reviewed to be as complete and accurate as possible. However, due to the complexity of these rules, this flowchart undoubtedly includes errors and omissions. You should consult a tax professional for individual advice regarding your own situation. This flowchart is not updated for changes in the tax laws and should not be relied upon for any purpose whatsoever.

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A court is able to exercise primary supervision over the administration of a trust if the court has or would have the authority under applicable law to render orders or judgments resolving issues concerning administration of the trust. Primary supervision means that a court has or would have the authority to determine substantially all issues regarding the administration of the entire trust. Administration of the trust means the carrying out of the duties imposed by the terms of the trust instrument and applicable law, including maintaining the books and records of the trust, filing tax returns, managing and investing the assets of the trust, defending the trust from suits by creditors, and determining the amount and timing of distributions.

Court Test -7(c)
Direct Admin'd O/S US

Admin'd Excl. In US

Automatic Migration

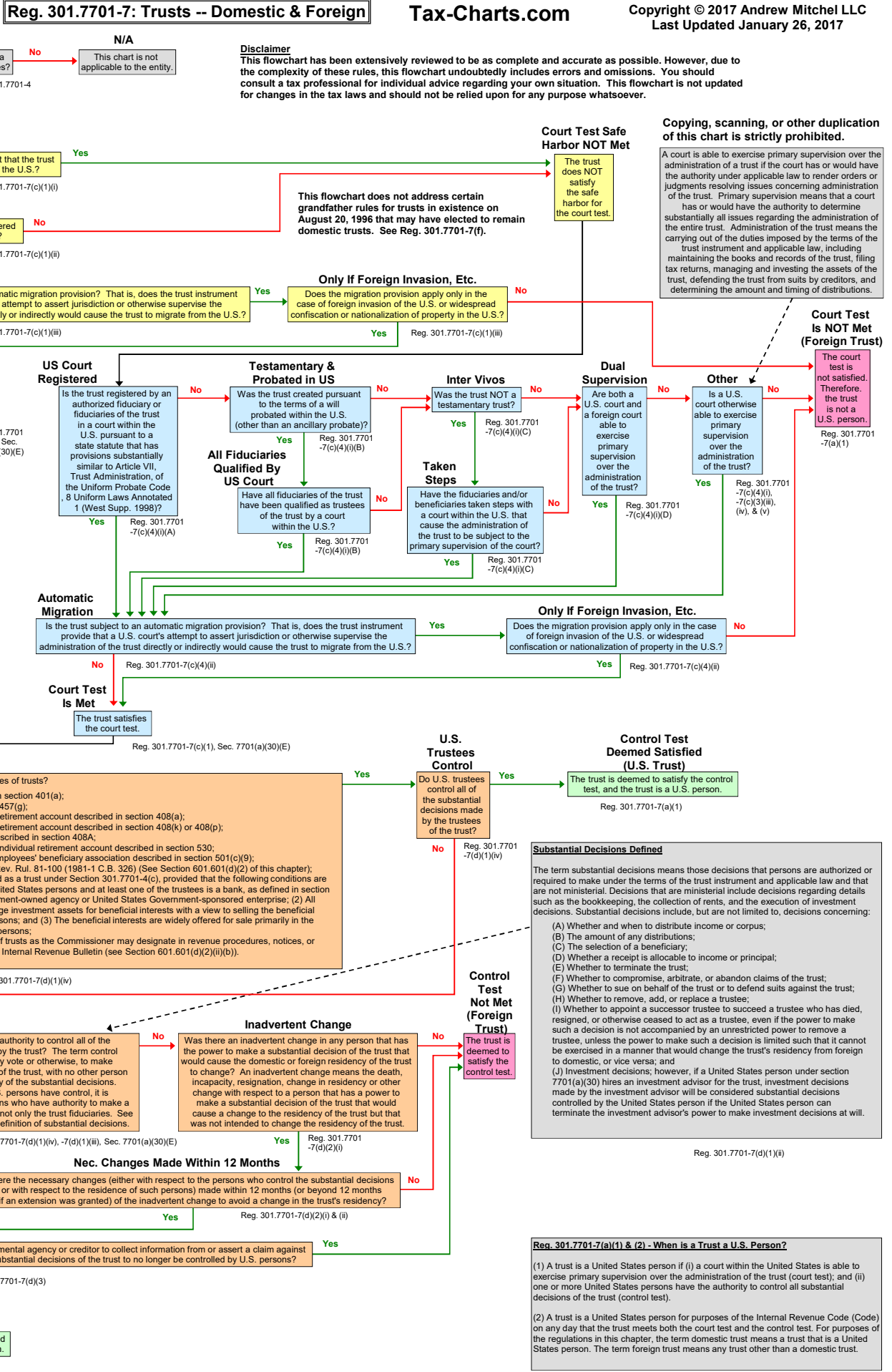
Court Test Safe Harbor Is Met

Control Test -7(d)

Employee Benefit Trusts

U.S. Persons Have Auth'y to Control

Control Test Is Met (U.S. Trust)



Court Test Is NOT Met (Foreign Trust)
The court test is not satisfied. Therefore, the trust is not a U.S. person.
Reg. 301.7701-7(a)(1)

Control Test Deemed Satisfied (U.S. Trust)
The trust is deemed to satisfy the control test, and the trust is a U.S. person.
Reg. 301.7701-7(a)(1)

Substantial Decisions Defined
The term substantial decisions means those decisions that persons are authorized or required to make under the terms of the trust instrument and applicable law and that are not ministerial. Decisions that are ministerial include decisions regarding details such as the bookkeeping, the collection of rents, and the execution of investment decisions. Substantial decisions include, but are not limited to, decisions concerning:
(A) Whether and when to distribute income or corpus;
(B) The amount of any distributions;
(C) The selection of a beneficiary;
(D) Whether a receipt is allocable to income or principal;
(E) Whether to terminate the trust;
(F) Whether to compromise, arbitrate, or abandon claims of the trust;
(G) Whether to sue on behalf of the trust or to defend suits against the trust;
(H) Whether to remove, add, or replace a trustee;
(I) Whether to appoint a successor trustee to succeed a trustee who has died, resigned, or otherwise ceased to act as a trustee, even if the power to make such a decision is not accompanied by an unrestricted power to remove a trustee, unless the power to make such a decision is limited such that it cannot be exercised in a manner that would change the trust's residency from foreign to domestic, or vice versa; and
(J) Investment decisions; however, if a United States person under section 7701(a)(30) hires an investment advisor for the trust, investment decisions made by the investment advisor will be considered substantial decisions controlled by the United States person if the United States person can terminate the investment advisor's power to make investment decisions at will.

Reg. 301.7701-7(a)(1) & (2) - When is a Trust a U.S. Person?
(1) A trust is a United States person if (i) a court within the United States is able to exercise primary supervision over the administration of the trust (court test); and (ii) one or more United States persons have the authority to control all substantial decisions of the trust (control test).
(2) A trust is a United States person for purposes of the Internal Revenue Code (Code) on any day that the trust meets both the court test and the control test. For purposes of the regulations in this chapter, the term domestic trust means a trust that is a United States person. The term foreign trust means any trust other than a domestic trust.