

State's effort to lure trusts paying off

Written by Jodi Schwan

Jun. 18, 2013 11:22 PM |

argusleader.com

As the final days of 2012 approached, Judge William Srstka of the Second Judicial Circuit in South Dakota told several lawyers he was spending New Year's Eve at home.

"I sent an email out to the lawyers who are interested in trusts that I would stay late if anybody had anything (that needed to be signed) last minute," said Srstka, then about a week from retirement.

Federal tax law was set to expire and an estate tax exemption prized by wealthy individuals appeared to be threatened.

"We had a lot of trusts being moved (to South Dakota) because they were worried about the fiscal cliff, and Judge Srstka said ... he'd sign orders until midnight," said Terry Prendergast, a partner in Murphy, Goldammer & Prendergast LLP. "That kind of thing gets around."

The federal issue never materialized, but the willingness of the judiciary to accommodate those who put their trusts in South Dakota is just one element credited to growing the industry in the state. Others include a favorable tax structure and some of the most accommodating privacy laws in the country.

The spark that lit the industry in South Dakota came in 1983, when the Legislature repealed a rule against perpetuities, thereby granting dynasty trusts an unlimited duration that allowed them to transcend federal transfer taxes on exempt dollars.

In 2012, for the first time, the number of trust companies chartered in South Dakota exceeded the number of state-chartered banks.

There are 67 trust companies in the state, with assets of more than \$120 billion. Some are public trust companies, and others are private family trust companies. Nearly all of them have been started here this century.

Gov. Dennis Daugaard, who worked for a decade as a trust officer in Sioux Falls, said the industry has plenty of room to grow in the state.

"There's still a lot of potential," Daugaard said. "It's the same as in the nontrust world. Every time you find a convert, and they come to South Dakota, they are almost uniformly surprised and pleased by the business climate here, the technology and the sophistication they don't expect to find."

'The trust tsunami'

It took South Dakota Trust Co. 10 years to garner 1,000 accounts, according to Pierce McDowell, president and co-owner. Then the threat of federal changes brought an influx of clients.

"I call it the trust tsunami of 2012," McDowell said. "We added more than 500 trust relationships with families from all over the world."

His public trust company has nearly \$11 billion in assets under administration. Chartered in 2002, the business model is different than most other public trust companies.

“We’re not a traditional trustee because we don’t manage money,” McDowell said. “We learned real quick that’s not what they (clients) are after. They’re after what one family called more of a ‘trustodian,’ a little north of a custodian and a little south of a trustee.”

The so-called tsunami has caused South Dakota Trust Co. to expand its space in the historic Kresge building at 10th Street and Phillips Avenue. It’s remodeling the lower level for more offices because the business also leases space to family trust companies that visit the state periodically.

“We provide them space. We provide them a resident director and administrative support,” McDowell said, adding that the company also hired a former state examiner to help trust companies prepare for their official state examinations, which occur every one to three years.

In 10 years, he has gone from a one-man office to a staff of 30, including three in Rapid City.

“The trust officers are professional people,” McDowell said. “This is a benefit for South Dakota. We’ve got CPAs, lawyers, combinations that are working here and enjoying it.”

Nearly all of the trust companies doing business in the state deal with the assets of out-of-state residents. Bank trust departments do more business with the general public, and about a dozen with Sioux Falls locations are licensed for trust services.

“I expect you’ll see banks more and more look at trust services, wealth management services, as they look into the future,” said Curt Everson, president of the South Dakota Bankers Association. “You’re seeing the tip of the iceberg with baby boomers moving ... into retirement.”

Legal, privacy perks

South Dakota was named the top jurisdiction nationwide in 2012 by *Trusts & Estates* magazine in recognition of its favorable laws and tax structure.

“We’ve always been in at least the top three for destination,” said Brian Kirby, a partner in Lindquist & Vennum LLP. “No income tax, low bank franchise tax and the flexibility to modify a trust and put provisions in is such that people want to be here.”

Many people putting their assets in trust here have family names known worldwide. Some are chartered in their own name – Carlson, Dillon, Guggenheim and Wrigley – while other recognizable families call themselves Butterfly or Condor.

Privacy laws in South Dakota are “very significant” to the trust business, said Dan Donohue, a partner in Davenport, Evans, Hurwitz & Smith LLP.

“I don’t believe any other state has that kind of advantage,” he said.

All records in lawsuits are permanently sealed, and if trustees request, their files will be sealed.

“They don’t necessarily want to be known to the world,” Senate Majority Leader David Lust said. “It’s assets of a family, and in a lot of cases the public shouldn’t have a right to know what they’re doing.”

Other states, including Delaware and Alaska, have adjusted their laws for competitiveness. Gov. Bill Janklow established a governor’s task force of trust industry representatives that continues today. Its 21 members meet to analyze opportunities to create more favorable laws and regulations.

Daugaard was a member before becoming governor in 2010.

“The task force looks at these issues thoroughly, and if it’s controversial they generally avoid it,” he said. “If it’s a good solution to a problem or an improvement that will help South Dakota remain a good place for trusts, it’s included.”

Daugaard also has started to meet with potential trust companies and families when he has traveled to places such as Chicago for an international biotechnology conference. He’s in New York this week with a delegation from Sioux Falls meeting with site selection consultants and also plans to visit about the benefits of locating trusts here.

“I think I’m telling them some things they don’t know,” he said. “My job is to demonstrate we’re a responsibly run state, and I think business likes certainty. To an extent that a state isn’t running very well ... that gives companies some anxiety about ‘Are they going to balance the budget on my back and will this seemingly good situation today turn sour tomorrow?’ ”

Newcomers' praise

Dorsey & Whitney Trust Co. came to Sioux Falls in 1999, attracted by favorable trust and tax laws and the proximity to its law firm’s Minneapolis headquarters. Fourteen years later, the company has a staff of 15 and is hiring two more. They’re professional positions and nearly all employees came from South Dakota.

“We work with every type of client a trust company can work with, very wealthy families from all over the United States,” President Carl Schmidtman said.

In 2002, Dorsey & Whitney moved into an office at 8th & Railroad Center.

“We’ve expanded six times here,” Schmidtman said. “And we hope to be here for a while. The best thing for us is the quality of personnel that we’ve been able to attract and train and keep.”

South Dakota’s newest trust company is National Advisors Trust of South Dakota. The organizers also run National Advisors Trust Co., which was founded in Kansas in 2001 as a federally chartered trust company.

It became licensed in South Dakota in May after also considering a branch in Delaware.

South Dakota “seemed like a lot better fit for us,” chief financial officer Aaron Bowman said. “The capital requirement was significantly less. The climate of the Legislature and the business climate, we thought, was very progressive and pro-business.”

The company, which deals exclusively with investment advisers, has an office at 300 N. Dakota Ave., and

the business plan calls for a full-time employee by the end of the year.

“We haven’t had any challenges,” Bowman said. “The meeting with the Division of Banking was very positive, very conversational.”

Bret Afdahl, director of the banking division, said state regulators want to pass along best practices to help trust companies succeed.

“We try to be very upfront,” he said. “We’re going to regulate you. We’re not going to give you a free pass, but we’re going to be fair and open-minded.”

Attorney Donohue said the division isn’t overbearing, does its examinations professionally and adds value through its recommendations.

“You’ve got the governor, the Legislature, the Division of Banking, our court system,” he said, naming parties involved in supporting the industry. “Our judges do as good a job here as any in the country dealing with complicated trust law issues. The lawyers also I think do a very good job.”

Giving back

While the state has gained jobs and some revenue from the trust companies located here, there is an effort to further integrate them into the business community and area philanthropic efforts.

South Dakota Trust Co. started a foundation a few years ago to help its clients contribute to causes throughout the state. It has raised more than \$300,000 and distributed grants statewide.

“We don’t mandate that they give to us or give at all, but we’ve had virtually 100 percent participation. What I see with these families is a real desire to be good stewards over the blessings that have been given them,” McDowell said. “When they do come, we have them meet at the Sanford Center or see our medical community. We’ve talked about needs for the zoo. You don’t know what heart strings you’re going to push.”

Some families also have invested in or bought businesses in the state, he said.

Daugaard said the South Dakota Trust Co. Foundation serves as a good model for helping trust companies contribute to the state, and he hopes to see others follow.

“I recognize ... it might be the same person who represents multiple trusts,” he said. “You see one person active in the community, and you might not realize they’re bringing to bear the influence of many people.”

The attorneys who assist trust companies in setting up and managing business in the state have seen an increase in giving back, too.

“I get the sense they’re becoming more and more involved,” Prendergast said. “There’s hundreds of thousands of dollars of charitable contributions each year by these trust companies. And there’s an indirect benefit as they become more familiar with South Dakota ... that anecdotally they’ve bought businesses here.”

Schmidtman of Dorsey & Whitney recently completed the Leadership Sioux Falls program through the Sioux Falls Area Chamber of Commerce and said he plans to become more involved in the business community.

“I would like to,” he said. “Our office is involved in some different things, Junior Achievement, and we support other organizations through financial means.”

The industry is likely to experience continued growth here, according to those involved in trust companies. Many individuals with family trusts know each other and have endorsed doing business in South Dakota.

“I would say it’s just taken time for the word to get out,” Daugaard said. “It’s not surprising South Dakota is a good place to locate a trust company because it’s a good place to locate most any company.”