

General Information Letter: The residency of a trust does not change when the residency of the beneficiaries or trustees changes.

January 23, 2009

Dear:

This is in response to your letter dated January 6, 2009 in which you state the following:

I am the co-trustee but not a beneficiary of testamentary trusts created by a revocable living trust. The settler of the revocable living trust was an individual who at his death was domiciled in Illinois. I am personally a resident of Illinois.

Section 1501(a)(20) of IITA provides that an irrevocable trust, the grantor of which was domiciled in Illinois at the time the trust became irrevocable, shall be considered an Illinois resident.

Although the decedent's revocable living trust, which became irrevocable on death, was clearly an Illinois resident, it is not clear to me if the testamentary trusts established under the terms of the decedent's revocable living trust and funded approximately eighteen months after the decedent's death are considered Illinois residents.

The primary beneficiary and other co-trustee of the trust is a California resident. In addition none of the secondary/contingent beneficiaries is an Illinois resident.

The trusts' assets consist solely of marketable securities.

Based on these facts please advise if the testamentary trusts are considered Illinois residents and therefore subject to Illinois income taxes on undistributed income.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

In determining whether trust income is subject to Illinois income taxation, in the case of a trust, as with any taxpayer, it is necessary to determine whether the trust is a resident or non-resident of the State of Illinois. In the case of a resident, Section 301(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) provides that all items of income or deduction which were taken into account in the computation of base income are allocated to Illinois. In the case of a non-resident, trust income is allocated or apportioned to Illinois in accordance with IITA Sections 301 through 308.

IITA Section 1501(a)(20) provides the statutory definition of the term "resident." The definition of resident includes:

(D) An irrevocable trust, the grantor of which was domiciled in this State at the time such trust

became irrevocable. For purpose of this subparagraph, a trust shall be considered irrevocable to the extent that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code.

Your letter indicates that the settler of the trust was an Illinois resident at the time the trust was established and became irrevocable. By virtue of the aforementioned IITA Section 1501(a)(20)(D), the trust was an Illinois resident upon establishment of the irrevocable trust and remains an Illinois resident, notwithstanding the fact that the primary beneficiary and co-trustee is a California resident. As an Illinois resident, the trust is subject to Illinois income taxation.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax