

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-96 (2) I
Income Tax
March 28, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I951113C

On November 13, 1995, a Petition for Advisory Opinion was received from Genevieve G. Harper Family Trust, Ralph R. Harper, Trustee, 3 Stefenage Court, Pittsford, New York 14534.

The issue raised by Petitioner, Genevieve G. Harper Family Trust, is whether it is a resident trust within the meaning of section 605(b)(3)(C) of the Tax Law and subject to the New York State personal income tax under Article 22 of the Tax Law.

Petitioner presents the following facts. Ralph R. Harper is a co-trustee of Petitioner, and is a resident of New York State. The remaining trustees, James W. Harper and John R. Harper, are both New York State residents.

Petitioner is a testamentary trust created under the last will and testament of Genevieve G. Harper, dated September 16, 1983. Genevieve G. Harper died a domiciliary and resident of Arcadia, Florida on March 29, 1995. The will of Genevieve G. Harper was admitted to probate in the Circuit Court of DeSoto County Florida by Order dated May 24, 1995. Ralph R. Harper, James W. Harper and John R. Harper were appointed personal representatives of the estate. Letters of administration were issued by the Circuit Court for DeSoto County Florida on May 24, 1995. The Circuit Court for DeSoto County Florida also appointed Ralph R. Harper, James W. Harper and John R. Harper trustees of the trust by Order dated August 18, 1995.

Petitioner is to be funded primarily with cash from an insurance policy on the life of the decedent, together with various securities owned by the decedent. The securities are predominantly Florida municipal bonds or Florida municipal bond funds. No real or tangible property will be used to fund the trust. All trust records will be maintained by the trustees in the County of Monroe in the state of New York. Petitioner's principal place of business will be in New York State.

Section 605(b)(3) of the Tax Law defines a "resident estate or trust" as follows:

(A) the estate of a decedent who at his [her] death was domiciled in this state,

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his [her] death was domiciled in this state, or

(c) a trust, or portion of a trust, consisting of the property of:

(i) a person domiciled in this state at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(ii) a person domiciled in this state at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

Section 605(b) (4) of the Tax Law defines a "nonresident trust" as a trust which is not a resident or part-year resident.

Petitioner was created under the Will of Genevieve G. Harper, who died a domiciliary and resident of Arcadia, Florida on March 29, 1995. Petitioner is to be funded primarily with cash from an insurance policy on the life of the decedent, together with various securities owned by the decedent which are predominantly Florida municipal bonds or Florida municipal bond funds. Since Petitioner consists of property transferred by the will of a nondomiciliary of New York State, Petitioner is not a resident trust pursuant to section 605(b) (3) of the Tax Law. Petitioner is a nonresident trust pursuant to section 605(b) (4) of the Tax Law.

Section 601(e) of the Tax Law imposes a tax for each taxable year on the taxable income which is derived from New York sources of every nonresident trust which is equal to the tax base multiplied by the New York source fraction. The New York source fraction is a fraction, the numerator of which is the taxpayer's New York source income and the denominator of which is the taxpayer's New York adjusted gross income.

Section 633 of the Tax Law provides that the New York source income of a nonresident trust is the sum of (1) the net amount of items of income, gain, loss and deduction entering into Federal adjusted gross income, as determined under section 601(e) (4) of the Tax Law, derived or connected with New York sources, and (2) the portion of the modifications described in section 618 of the Tax Law which relate to income derived from New York sources other than that portion of the modification provided in section 618(3) which relates to section 615 of the Tax Law. The determination of source is made in accordance with the applicable rules of section 631 of the Tax Law as in the case of a nonresident individual.

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Pursuant to the rules of section 631 of the Tax Law, Petitioner does not have any New York source income. Therefore, Petitioner is not subject to tax under Article 22 of the Tax Law.

DATED: March 28, 1996

s/DORIS S. BAUMAN
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.