

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(4)I
Income Tax
June 8, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I091106A

On November 6, 2009 the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the trusts qualify as nontaxable resident trusts for purposes of Tax Law section 605(b)(3)(D). Because the trusts hold no real or tangible property in New York and the trustee is not domiciled in New York, the trusts are nontaxable resident trusts for purposes of Tax Law section 605(b)(3)(D).

Facts

In April 2005, [REDACTED] as grantor created irrevocable trusts for the benefit of [REDACTED] and [REDACTED] (the Trusts). The Trusts were funded with cash. The trust agreements provided for two trustees: [REDACTED] (S), a domiciliary of New York City, and [REDACTED] (R), a non-domiciliary of New York State. R became the sole trustee upon the death of S on August 1, 2008. R remained a nonresident of New York State after becoming sole trustee. For the calendar year ended December 31, 2008, the Trusts paid New York State fiduciary income tax on income earned from January 1, 2008 to July 31, 2008. The Trusts do not own any real property or tangible personal property in New York State.

Analysis

Tax Law section 605(b)(3) defines a resident trust as follows:

- a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state, or
- a trust, or portion of a trust, consisting of the property of:

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

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.

Tax Law section 605(b)(3)(D)(i) provides that a resident trust is not subject to New York State income tax if all of the following conditions are satisfied:

(I) all the trustees are domiciled in a state other than New York; (II) the entire corpus of the trusts, including real and tangible property, is located outside the state of New York; and (III) all income

and gains of the trust are derived from or connected with sources outside of the state of New York, determined as if the trust were a non-resident trust.

For purposes of section 605(b)(3)(D)(i), intangible property shall be located in New York State if one or more of the trustees are domiciled in the State. Tax Law section 605(b)(3)(D)(ii).

Tax Law section 605(b)(6) defines a part-year resident trust as a trust that is not a resident or nonresident for the entire taxable year.

As admitted by Petitioner, the Trusts are resident New York trusts. The Trusts, however, satisfied the conditions to be deemed a resident trust not subject to New York State income tax effective August 2, 2008. On that date, their sole trustee was a non-domiciliary of New York. The Trusts owned no real property or tangible personal property located in New York. Because the sole trustee is a non-domiciliary, trust income from intangible assets is not New York source income. *Charles B. Moss Trust*, Adv Op Comm T & F, April 8, 1994, TSB-A-94(7)I. Therefore, any income the Trusts earned after they satisfied the requirements of Tax Law section 605(b)(3)(D)(i) is not subject to New York income tax.

Once a resident trust satisfies the conditions in Tax Law section 605(b)(3)(D)(i), it is no longer subject to further taxation by New York State so long as the trustee remains a non-domiciliary and the trust continues to meet the other conditions in section 605(b)(3)(D)(i). The Trusts must, however, accrue to the period of their taxable residence any income, gain, loss, deduction, items of tax preference or any ordinary income portion of a lump sum distribution accruing prior to the Trusts' change of tax status, regardless of the Trusts' method of accounting.

DATED: June 8, 2010

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.