

Filing Requirement for Resident Trusts Not Subject to Tax

Generally, a resident trust is required to file a New York State fiduciary income tax return if it meets the filing requirements for resident trusts. However, under the policy described in TSB-M-96(1)I, *Resident Trusts*, a resident trust that was not subject to tax because it met the conditions described in section 605(b)(3)(D) of the Tax Law was not required to file a return (see *Background* below).

Effective for tax years beginning on or after January 1, 2010, the policy in TSB-M-96(1)I is revoked, and a resident trust that meets the conditions of section 605(b)(3)(D) of the Tax Law will be required to file a New York State fiduciary income tax return if it meets the filing requirements for resident trusts. See *Filing requirements for resident trusts* on page 2.

Background

In general, a resident trust is subject to New York tax if it has any New York taxable income for the tax year. Under New York State Tax Law, a *resident trust* is:

- a trust created by the will of a decedent who was domiciled in New York State at the time of his or her death;
- an irrevocable trust that consists of property of a person domiciled in New York State when the property was transferred to the trust;
- a revocable trust consisting of property of a person domiciled in New York State at the time the property was transferred to the trust if it has not later become irrevocable; or
- a revocable trust that has later become irrevocable if the trust consists of property of a person domiciled in New York State when it becomes irrevocable.

Note: The resident status of the fiduciary does not affect the resident status of a trust.

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

- All the trustees are domiciled in a state other than New York.
- The entire corpus of the trust, including real and tangible personal property, is located outside of New York State.
- All income and gains of the trust are derived from or connected with sources outside of New York State, determined as if the trust were a nonresident trust.

Filing requirements for resident trusts

A New York State resident trust **must** file a New York State fiduciary income tax return if the trust:

- is required to file a federal income tax return for the tax year;
- had any New York taxable income for the year;
- had tax preference items for minimum income tax purposes in excess of the specific deduction; **or**
- is subject to a separate tax on lump-sum distributions.

As previously related, there is no longer any exception to these requirements for resident trusts that are not subject to tax because they meet the conditions of section 605(b)(3)(D) of the Tax Law.

Special rules for filing

A trust that is required to file a New York State income tax return must file using Form IT-205, *Fiduciary Income Tax Return*.

Resident trusts that are not subject to tax under the conditions of section 605(b)(3)(D) of the Tax Law, but are required to file Form IT-205, will also be required to complete and attach new Form IT-205-C, *New York State Resident Trust Nontaxable Certification*, to Form IT-205.

Form IT-205-C will be available on the department Web site for tax year 2010. To receive e-mail notifications containing links to newly posted forms and information, sign up for the *Subscription Service* through the Tax Department Web site (www.nystax.gov).

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.