

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

TSB-M-96-(1)I  
Income Tax  
July 29, 1996

**Resident Trusts**

Reproduced below is the text of a letter from Deputy Commissioner and Counsel, Steven U. Teitelbaum, on the subject of filing requirements for resident trusts that are exempt from New York State income tax.

In response to your inquiry, this is to confirm that the trust which you describe in your letter is not subject to New York personal income tax and accordingly is not required to file a New York State fiduciary income tax return.

The trust which you describe is a resident trust as defined in Tax Law § 605(b)(3)(B) because it was created under the will of a decedent who, at the time of death, was domiciled in New York. Further, (1) the trustees of the trust are domiciled outside of New York, (2) the entire corpus of the trust consists of intangible assets (marketable securities), and (3) all income and gains of the trust are derived from sources outside of New York, determined as if the trust were a nonresident.

Accordingly, pursuant to New York State Income Tax Regulation § 105.23(c), as further explained in 1994 Advisory Opinion - TSB-A-94(7)I, the New York State personal income tax cannot be imposed on the trust. In addition, since the income tax cannot be imposed, the filing of a New York fiduciary income tax return will not be required.

If you foresee that the trust will continue to meet the conditions for income tax exemption, you may file a final return on Form IT-205, Fiduciary Income Tax Return, check the "Final return" box at the top of the Form, and attach a statement indicating that the trust is a trust meeting the conditions for exemption under New York State Income Tax Regulation § 105.23(c).