

17-GC-0019

IT 19-0019-GIL 10/24/2019 Nonresident Trusts

Trust whose only connection to Illinois is an investment advisor should be considered a nonresident trust. (This is a GIL.)

October 24, 2019

Re: Illinois Taxation of Nonresident Trust Income

Dear XXX:

This is in response to your dated February 17, 2017, in which you request information regarding Illinois income tax. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.tax.illinois.gov.

In your letter you have stated and made inquiry as follows:

Your opinion is requested with respect to a certain trust income tax issue.

Issue

Is the income of a STATE nongrantor trust subject to taxation in Illinois where the trust's only contact with Illinois is an Illinois investment advisor appointed pursuant to STATE directed trust statute?

Facts

STATE residents desire to establish a STATE Incomplete Non-Grantor Trust (NING). The NING will be governed by STATE law and have a STATE trustee. The trust's beneficiary will not be a resident of the state of STATE.

The trustee desires to appoint an investment trust adviser that has its principal place of business in Illinois. Such appointment will be pursuant to STATE Directed Trust statutes, which permit the trustee to appoint an "investment trust adviser."¹ According to the STATE Directed Trust statutes, an appointed investment trust adviser accepting his or her role must submit to the jurisdiction of STATE courts, regardless of any term to the contrary in the trust instrument.² The investment trust adviser is considered a fiduciary under STATE law.³

¹ STATE Rev. Stat. 163.5553

² STATE Rev. Stat. 163.5555

³ STATE Rev. Stat. 163.5551

The proposed trust terms may be summarized as follows:

Grantor – STATE resident

Trustee – STATE resident. Trustee will appoint an Illinois investment trust adviser.

Beneficiary – Not an STATE resident

Choice of Law – STATE

Location of Assets – STATE mailing address on custodial (e.g.: COMPANY) account

Trust Protector – Not a resident of STATE

Trust Business – Trustee administers all functions in STATE, except investment role

Discussion

In *Lewis Linn v. The Department of Revenue*,⁴ the Illinois appellate court faced the issue of whether to tax a trust's income based on the sufficiency of the trust's connection to Illinois. In that case, the court concluded that none of the following factors existed to give Illinois personal jurisdiction over the trust: "provisions of the trust instrument, the residence of the trustees, the residence of its beneficiaries, location of trust assets and the location where the business of the trust is to be conducted."⁵ Also, the court in *Linn* found that the Texas trust in question did not receive the benefits of Illinois Law.

Here, the trust's **only connection** to Illinois will be its investment advisor who will be governed by STATE law, which requires the adviser to submit to the jurisdiction of STATE courts, regardless of any term to the contrary in the trust instrument. Thus, neither the trust nor Illinois investment adviser may receive the "benefits and protections of Illinois law," which mitigates the significance of the trust's only connection to Illinois.

Request: It is requested that your office provide its opinion whether the income of the trust described above would be subject to Illinois taxation.

DEPARTMENT'S RESPONSE:

Under the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 *et seq.*), residents of Illinois pay tax on the entire amount of their base income and nonresidents pay tax only on that portion of base income that is allocable to Illinois. See 35 ILCS 5/201, 5/202, 5/203 and 5/301. Under IITA Section 502(a), an income tax return must be filed by any person liable for tax imposed under the

⁴ 2013 STATE App (4th) 121055

⁵ 2013 STATE App (4th) 121055 p. 9

IITA, plus a resident must file an income tax return regardless of any liability under the IITA if the resident is required to file a federal income tax return. 35 ILCS 5/502(a).

Section 1501(a)(20) of the IITA defines the term "resident." 35 ILCS 5/1501(a)(20). Under this section, a trust is considered an Illinois resident in two situations:

- (1) a trust created by a will of a decedent who at his death was domiciled in Illinois, and
- (2) an irrevocable trust, the grantor of which was domiciled in Illinois at the time the trust became irrevocable.

A trust's status as a resident or nonresident is not based upon the residence of the trustee or beneficiaries. A trust that does not fall within either of the above situations is a nonresident under the IITA and thus pays tax only on its income allocable to Illinois. Under IITA section 301(c)(2)(A), nonbusiness interest and dividend income of a nonresident trust is not allocable to Illinois.

If the trust is not a resident and has no Illinois-sourced income, it would have no liability and would not be required to file an Illinois return.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions regarding this letter, you may contact me at (217) 782-2844.

Very truly yours,

Mike Mankowski
Associate Counsel