

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

TSB-A-11(4)I  
Income Tax  
July 27, 2011

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1110228A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the [REDACTED] (the Trusts) are exempt from filing New York State income tax returns.

We conclude that, when the Trusts met the conditions set forth in Tax Law §605(b)(3)(D), the Trusts were not required to pay New York State income tax and, prior to 2010, were not required to file New York income tax returns. As of tax year 2010, however, a trust that meets the conditions set forth in Tax Law §605(b)(3)(D) is required to file Form IT-205 *Fiduciary Income Tax Return* and attach Form IT-205-C *New York Resident Trust Nontaxable Certification* to Form IT-205. For more information on this filing requirement please see TSB-M-10(5)I.

**Facts**

The Trusts were created by [REDACTED] on December 26, 2000. At the time the Trusts were created, both grantors were New York residents. The initial trustees were [REDACTED] (Trustee 1) and [REDACTED] (Trustee 2). After the Trusts were created, however, Trustee 2 moved from New York to Connecticut. In 2005, Trustee 1 resigned as co-trustee, leaving Trustee 2 as the sole trustee. At the time of Trustee 1's resignation, Trustee 2 was a resident of Connecticut where she continues to live. In late 2005 or early 2006, the grantors moved to Florida. Prior to the grantors move to Florida, \$50,000 had been contributed to each trust (the New York resident portion); since the move, the grantors have contributed an additional \$120,000 to each trust (the non-resident portion). Further, the Trusts' corpuses consist solely of securities.

**Analysis**

A trust is a New York resident trust, if at the time a grantor transfers property to the trust, the trust is irrevocable and he or she is domiciled in New York or the trust is a revocable trust at the time the property is transferred but subsequently becomes irrevocable and the grantor is domiciled in New York. *See*, Tax Law §605(b)(3)(C). A resident trust, however, will not be subject to tax if the following three conditions are met: (1) all of the trustees are domiciled in a state other than New York; (2) the entire corpus of the trust, including real and tangible property, is located outside the state of New York; and (3) all income and gains of the trust are derived from or connected with sources outside the state of New York, determined as if the trust were a nonresident trust. *See*, Tax Law §605(b)(3)(D).

In this case, the Petitioner's Trusts are considered to be resident trusts in both New York and Florida. This dual resident trust status occurs, because when the Trusts were funded and made irrevocable, the grantors were domiciled in New York and the grantors made additional contributions to the Trusts after they changed their domicile to Florida. As such, the New York resident portions of the Trusts are subject to New York income tax unless they meet the conditions set forth in Tax Law §605(b)(3)(D). Additionally, if the Trusts have New York source income, the nonresident portions of the Trusts will be subject to New York income tax as nonresident trusts pursuant to Tax Law §631. *See*, NYCRR §105.23(d), Example 2

Based on the information submitted, the Trusts never owned and do not currently own any real or tangible property in New York and they have no New York source income. Therefore, the Trusts met the second and third requirements of Tax Law §605(b)(3)(D). However, because Trustee 1 was a New York resident, the Trusts did not meet the first requirement of Tax Law §605(b)(3)(D) and initially were subject to New York State income tax only on the New York resident portions of the Trusts. When Trustee 1 resigned as trustee, leaving only Trusty 2, a Connecticut resident, as the sole trustee, the Trusts met all the requirements of Tax Law §605(b)(3)(D). Accordingly, when Trustee 1 resigned as trustee, the Trusts were no longer subject to New York income tax. As of tax year 2010, even though the Trusts meet the conditions set forth in Tax Law §605(b)(3)(D), they are required to file Form IT-205 *Fiduciary Income Tax Return* and attach Form IT-205-C *New York Resident Trust Nontaxable Certification* to Form IT-205. For more information on this filing requirement, please see TSB-M-10(5)I.

DATED: July 27, 2011

/S/  
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DEBORAH LIEBMAN  
Deputy Counsel

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.