

IT 20-0009-GIL 06/19/2020 TRUST RESIDENCY

Whether a trust is +an Illinois resident dependent on definition of resident found in Sections 1501(a)(20)(C) and (D) of the IITA. (This is a GIL.).

June 19, 2020

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter dated May 18, 2020, 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 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

I could use some help as soon as possible so we can finish filing 2019 tax returns. My Nevada Accountant and I have a difference of opinion and need clarification.

My mother-in-law, an Illinois resident, died on XX/XX/2019 and specified in her grantor trust that another Trust was supposed to be created for her daughter, instead of a lump sum inheritance, so that her money would be managed by her son, for her daughter. The daughter lives in CITY, Illinois and is 72 and has been on disability, and now on social security for many years.

So when his mother died, the son, my husband, who lives in Nevada, opened up a Nevada Trust because he manages and administers the money from Las Vegas, NV. The money is invested with an investment firm in New York. All income from that trust is passed down on a K-1 to his sister and she will file IL-1040. A Federal return for the trust will be filed and show the dividends, interest and capital gains as "passed through" to the beneficiary. The daughter only receives monthly payouts, or if there is an additional special need that requires additional funds.

Does an IL-1041 need to be filed also? It seems like this is just an informational return that shouldn't be required. And if so, how often? My local accountant feels that capital gains are not to be passed through to beneficiary, but taxed at the trust level. And the way she reads the instructions for the IL-1041, she feels it says the trust has "Illinois residency" and we should file it. An Illinois lawyer/accountant said, per the LINN case, it does not have to be filed. And Illinois Taxpayer Assistance line has said NO:

NAME,

If the trust was setup in Nevada, it would be considered to have residency in Nevada, and wouldn't be required to file an IL-1041, unless it had Illinois Income. The income generated by the trust and passed through to the Illinois resident, would be reported on

the federal K-1, and then claimed on the Illinois residents IL-1040 (as stated would happen in your original email).

I cannot provide permission for you not to file the return, I can only help guide you based on the Illinois Income Tax Act and the facts that are presented to me. My recommendation, if you want something in writing, is to submit a written request to our Legal Services division and request a letter ruling regarding your exact situation.

So I am writing to you, for this clarification, proper forms to file and permission.

RULING

In determining whether trust income is subject to Illinois income taxation, in the case of a trust, as with any taxpayer, it is necessary to determine whether the trust is a resident or non-resident of the State of Illinois. Section 201(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) imposes a tax on trusts for the privilege of earning or receiving income in or as a resident of this state. Accordingly, if a trust is a resident of the state, or earns or receives income in Illinois, it must file a return and pay taxes. In the case of a non-resident, trust income is allocated or apportioned to Illinois in accordance with IITA Sections 301 through 308. Concerning §203(c), base income of a trust is the trust's taxable income for the taxable year subject to a number of addition and subtraction modifications. IITA Section 202 provides that net income is that portion of base income allocable to this State. Thus, if the trust has net income, as defined by the Illinois Income Tax Act, it must file a return regardless of any deductions or distributions to beneficiaries.

Alternatively, the trust may be required to file a return because it is a resident of this State. Sections 1501(a)(20)(C) & (D) of the IITA define which types of trusts are considered residents. Section 1501(a)(20)(C) states "[a] trust created by a will of a decedent who at his death was domiciled in this State" is a resident. According to your letter, the trust in question was created as specified in your mother-in-law's grantor trust. Your mother-in-law is a decedent who was domiciled in Illinois at the time of her death, but from your letter, it is unclear whether the "grantor trust" you refer to would be considered a "will" under Illinois law. If the trust in question was created by your mother-in-law's will, then it would be considered an Illinois resident trust. If the "grantor trust" does not meet the definition of "will," then Section 1501(a)(20)(C) is inapplicable.

Section 1501(a)(20)(D) of the IITA states "[a]n irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable" is a resident. For purposes of this subparagraph, a trust shall be considered irrevocable to the extent that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code. From your letter, it is unclear whether your mother-in-law or your husband is the grantor of the Nevada trust. It is also unclear whether the trust is irrevocable. Because of this, I cannot comment further except to say that if the grantor of the trust was domiciled in Illinois at the time the trust became irrevocable, then it is an Illinois resident trust. If the trust is revocable, and/or the grantor was not domiciled in Illinois when it became irrevocable, then Section 1501(a)(20)(D) is inapplicable. If, by virtue of the aforementioned IITA Sections 1501(a)(20)(C) or (D), the trust is an Illinois resident, the trust is subject to Illinois income taxation and an IL-1041 is required to be filed.

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.

Sincerely,

Michael D. Mankowski
Associate Counsel - Income Tax