

Whether an irrevocable trust continues to be subject to Illinois income tax after the beneficiaries and trust administration are relocated out of state.(This is a GIL)

October 14, 2021

NAME/ADDRESS

RE: Letter ruling request concerning taxation of trusts

Dear NAME:

This is in response to your letter dated August 20, 2021, in which you request a letter ruling regarding Illinois income tax treatment of a family trust. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed from the Department's web site at [www.tax.illinois.gov](http://www.tax.illinois.gov).

Your letter states as follows:

I am contacting you in hopes of clarifying the Illinois tax treatment of a revocable family trust made irrevocable following the death of the grantor.

In YEAR, an Illinois resident formed an Illinois revocable family trust that became irrevocable upon his death in YEAR. The trust owns an undivided 50% interest in an Illinois farm, a 35% interest in an Illinois LLC owning additional farm ground, and an investment account at FINANCIAL INSTITUTION. Terms of the trust provide income for life for the grantor's spouse, with corpus passing to the couple's grown children upon the death of the spouse.

The spouse has moved to STATE fulltime and is in the process of selling the family residence in Illinois. All children of the couple are grown and living outside of Illinois. All trust records will be maintained in STATE.

The spouse understands she will always be liable for Illinois nonresident income tax on all net income from the Illinois farms.

The spouse hopes to avoid filing Illinois trust returns for 2022 and beyond, and to discontinue paying Illinois income and replacement tax on the net income of the trust. In addition, the spouse hopes to discontinue paying nonresident individual income tax on the interest and dividend income from the FINANCIAL INSTITUTION account.

The trust was created as an Illinois trust. The trust document does allow for the change in the situs of the trust as shown on the attached copy of section

19.06 of the 97-page trust document. A trust protector has been appointed by the court, and all beneficiaries of the trust have been notified of the change in situs from Illinois to STATE, effective January 1, 2022.

In light of the above, do you agree that for 2022 and beyond, the trust is no longer required to file Illinois Fiduciary income and replacement tax returns? Do you agree that for 2022 and beyond, the only tax owed to Illinois relating to this trust will be the nonresident individual income tax owed on the net income from the Illinois farms?

Your response to this matter is requested. Thank you very much for your cooperation.

### **RULING**

Section 1501(a)(20) of the Illinois Income Tax Act (IITA) defines residence for purposes of a trust as an “irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable.” In *Lewis Linn v. Department of Revenue*, 2013 IL App (4<sup>th</sup>) 121055, the plaintiff argued that requiring a trust to file returns and pay income tax as an Illinois resident based solely upon the residence of the grantor violated due process where the trustee, beneficiaries and protector were all located out of state. The Illinois Appellate Court found that the trust lacked sufficient contacts with Illinois to satisfy the Due Process Clause, because none of the following factors existed to give Illinois personal jurisdiction over the trust:

- The provisions of the trust instrument
- The residence of the trustees
- The residence of the beneficiaries
- The location of trust assets
- The location where the business of the trust is conducted.

In your letter you state that the trust owns an interest in Illinois farmland and an Illinois LLC, so it would seem to have sufficient contacts to be required to file form IL-1041 and pay tax on its net income.

Even if you determine that the trust is not an Illinois resident, it would still be required to file a return and pay tax on its Illinois source income. IITA section 301(c)(2)(A) provides that a trust does not allocate to Illinois: “Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 (including, without limitation, interest, dividends, items of income taken into account under the provisions of Sections 401 through 425 of the Internal Revenue Code, and benefit payments received by a beneficiary of a supplemental unemployment benefit trust which is referred to in Section

501(c)(17) of the Internal Revenue Code).” Under IITA section 303, the following items of nonbusiness income are allocated to Illinois by a nonresident trust:

- Capital gains and losses from sales or exchanges of real property located in this state
- Capital gains and losses from sales or exchanges of tangible personal property with a situs in this state
- Capital gains and losses from sales or exchanges of intangible personal if the commercial domicile is in this state
- Rents and royalties from real property located in this state
- Rents and royalties from tangible personal property utilized in this state

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Very truly yours,

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