

State of Rhode Island - Division of Taxation

Personal Income Tax

Regulation PIT 90-13

Trust Distributions

I. REFERENCE AND DEFINITIONS

A. This regulation is intended to provide guidance as referenced in Title 44, Chapter 30, Section 5(c):

(c) Resident Estate or Trust - a resident estate or trust means:

(1) The state of a decedent who at his or her death was a resident individual in this state.

(2) A revocable trust which becomes irrevocable upon the occurrence of any event (including death) which terminates a person's power to revoke, but only after the event, and only if the person having the power to revoke was a Rhode Island resident individual at the time of the event.

(3) A trust created by will of a decedent who at his or her death was a resident individual in this state.

(4) An irrevocable trust created by or consisting of property contributed by a person who is a resident individual in this state at the time the trust was created or the property contributed

(A) while the person is alive and a resident individual in this state, and
(B) after the person's death if the person died a resident individual of this state.

(5) In subdivisions (2), (3), and (4) the trust shall be a resident trust only to the extent that the beneficiaries are Rhode Island resident individuals, subject to such regulations as may be promulgated by the tax administrator.

B. "Income" has the meaning set out in section 643(b) of the Internal Revenue Code.

C. Discretionary trust means a trust where the fiduciary has a discretionary power to distribute income or to accumulate income.

II. RESIDENCY STATUS OF BENEFICIARIES

A. The status of a beneficiary as a "resident individual" or as a "nonresident individual" is his or her status for personal income tax purposes but determined at the close of the trust's taxable year rather than at the close of the beneficiary's taxable year.

B. For those children born after the execution of the trust, children of a resident individual are deemed to be resident individuals and; likewise, children of a nonresident individual are deemed

to be nonresident individuals.

III. RESIDENCY STATUS OF THE TRUST

A. If income is accumulated in a discretionary trust in any year and the trustee has a discretionary power to distribute the income or the accumulated income among a group of people, any one of whom is a resident individual, the trust is deemed to be a resident trust with regard to the accumulated income pertaining to the resident beneficiary or beneficiaries.

B. If income is accumulated in a trust in any year, the trust is deemed to be a resident trust for the purposes of the accumulated income to the extent that the income is accumulated for future distribution only to a person who is a (or to persons who are) resident(s) at the close of the trust's taxable year; and is deemed to be a nonresident trust to the extent that the income is accumulated for future distribution to a person(s) who is a nonresident at the close of the trust's tax year.

C. Capital gains realized and deemed retained for future distribution to the remaindermen are undistributed gains and the trust is deemed to be a resident trust in the same ratio that the interests of all resident individual remaindermen bear to the interests of all remaindermen.

IV. EXAMPLES

Situation A: The will of a resident individual establishes a discretionary trust. During the lifetime of the wife (W), income (except capital gains) may, in the discretion of the trustee, be paid to W, the son (S), the daughter (D) or any issue of S or D, or the income may be accumulated. On W's death, the principal is to be distributed in equal shares to S and D or to the issue of either if S and/or D are not living at that time. Thus, the trustee has a discretionary power to distribute accumulated income or principal to W, S, D or to any issue of S or of D.

1. During the year all of the income except capital gains is currently paid to W. The trust realizes \$1,000 of long-term capital gains and retains those gains.

WHAT IF: W and S are Rhode Island residents and D resides in New York and is not a Rhode Island individual?

ANSWER: Since presumptively the principal will ultimately pass in equal parts to S and D (one of whom is a resident individual and the other is not), the capital gains are therefore being accumulated one-half for a resident and one-half for a nonresident. Thus, one-half of the retained income (capital gains) is subject to Rhode Island personal income tax and a Rhode Island 1041 form is required to be filed. The fact that W is a resident individual is immaterial concerning the capital gains because the principal will eventually go to S and D.

WHAT IF: W resides in Massachusetts and is not a Rhode Island resident; S and D are both Rhode Island resident individuals?

ANSWER: Since all of the capital gains are being accumulated for future distribution to persons who are Rhode Island resident individuals, the trust is therefore considered a resident trust with respect to the capital gains and a Rhode Island 1041 form is required to be filed as it pertains to the retained income (capital gains).

2. During the year the trust receives \$10,000 of income and realizes \$1,000 in long term capital

gains. The trustee pays \$8,000 of income to W; accumulates the remaining \$2,000; and makes no principal distributions.

WHAT IF: S is a Rhode Island resident individual and W and D both reside in New York and are not Rhode Island resident individuals?

ANSWER: Since one of the beneficiaries S (who, in the discretion of the trustee) may receive the entire accumulated income, is a resident individual, the trust is considered a resident trust with respect to the income retained. Because one of the two remaindermen is a resident individual, one-half of the capital gains retained are subject to Rhode Island personal income tax.

WHAT IF: W is a Massachusetts resident and S and D are both Rhode Island resident individuals?

ANSWER: The trust is a resident trust and must report and pay Rhode Island taxes on all the retained income.

Situation B: The will of a resident individual establishes a discretionary trust. During W's lifetime, the trustee is authorized, but not required, to pay income (except capital gains) and/or principal in its discretion among a group consisting of W, S, D, the issue of S and the issue of D. On W's death, the trust divides into two separate trusts with S receiving a life income from one with the principal passing to his issue at his death; and D receiving a life income from the other with the principal passing to her issue at her death.

WHAT IF: During the year the trustee distributes all income and realizes \$2,000 of long term capital gains. W is a Rhode Island resident individual. S is a Rhode Island resident individual as are his minor children. D resides in Massachusetts and has two children, a son (GS) who is 22 and a Rhode Island resident individual and a daughter (GD) who resides in Massachusetts.

ANSWER: Because capital gains are presumptively accumulated for future distribution, the trust is therefore a resident trust with respect to 3/4 of the capital gains. The reasoning behind this is that one half is being accumulated for the benefit of S's issue (all of whom are Rhode Island residents) and one quarter (one half of one half) are being accumulated for GS who is also a Rhode Island resident.

SEE ALSO FORM RI-1041

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TAX ADMINISTRATOR

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