

An Illinois resident trust with Illinois based assets must file an Illinois income tax return. (This is a GIL.)

December 6, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated August 20, 2021, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Plus, **I require a Letter Ruling** from the IDOR regarding a series of complex Decantment Acts that I describe herein below, and which I have likewise directed to the Office of the Associate Chief Counsel of the Internal Revenue Service.

Not unlike the circumstances cited in Letter Ruling IT-21-0007-GIL, the trustee and beneficiaries of the TRUST have moved out of Illinois. However, as pointed out by your Department in IT-21-0007-GIL, those are not the determining factors in deciding whether or not an irrevocable trust is a resident of Illinois and is required to file Form IL-1041. As a matter of fact, the TRUST has always been administered in Illinois and all remaining trust assets are domiciled in Illinois.

Pursuant to Illinois Statute 760 ILCS 3, Section 108, "Principal place of Administration," subparagraph (b): A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

- (1) Pursuant to the Illinois Revenue Code, the trust is considered an Illinois resident for income tax purposes;

December 6, 2022

- (2) The trust is a legal entity registered to do business in Illinois;
- (3) The largest number of trust beneficiaries reside in just two States, the State of Washington and the State of Illinois;
- (4) At no time has the trustee ever notified the “qualified beneficiaries” of a change in place of administration from Illinois;
- (5) At no time has the trustee ever sought a change in place of administration from Illinois.
- (6) The trust has elected QTIP treatment.

Thus, in compliance with my continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of its beneficiaries, I have declared that the place of administration is and shall remain in Illinois, as it has always been.

As was the case in Letter Ruling IT-21-0007-GIL, the grantor is deceased. “The spouse has moved to a state other than Illinois fulltime...All children of the couple are grown and living outside of Illinois. All trust records will be maintained in a state other than Illinois.”

Yet, “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 (4th) 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.”

But here the circumstances are different.

Contrary to the finding in *Lewis Linn v. Department of Revenue*, in the case of the TRUST there exist multiple factors which give rise to the state of Illinois being able to exercise personal jurisdiction over the trust.

To begin with, trust assets have been continuously located in Illinois since the year the TRUST was founded, including the years when Premier Trust of STATE was interim temporary successor trustee.

- In YEAR, trust assets were located in Illinois in multiple locations, including with FINANCIAL INSTITUTE and including escrowed deposits with one or more Illinois attorneys (ATTORNEY1).
- In YEAR, trust assets were located in Illinois, including escrowed deposits with an Illinois attorney (ATTORNEY2). Additionally, in YEAR, the TRUST defended a lawsuit in CITY, Illinois (20-L-00002).
- In YEAR, not only were trust assets located in Illinois, including maintaining a checking account with an Illinois financial institution (BANK), but

December 6, 2022

that same year the business of the trust was conducted from an address in Illinois after registering with the Illinois Department of Revenue, confirmation ##-###-###-###.

- In YEAR, trust assets were located in Illinois, including maintaining a checking account with an Illinois financial institution (BANK). In YEAR, the Trust defended a lawsuit in CITY, Illinois (21-L-00230). In YEAR, the business of the trust was conducted from an address in Illinois after registering with the Illinois Department of Revenue, confirmation ##-###-###-###.

In Letter Ruling IT-00-7, you state that: “Even before Quill was decided, therefore, the Illinois appellate court recognized that due process does not require that a testamentary trust’s trustee, or trust assets, be physically present in Illinois, or that the administration of the trust take place in Illinois, before Illinois could be deemed to have, or before an Illinois court could or would exercise, continuing jurisdiction over the trust and/or its fiduciaries.”

“The United States Supreme Court has long acknowledged that residency alone provides the basis for state taxation of all of a resident’s income, from whatever source. *New York ex rel. Cohn v. Graves*, 300 U.S. 308, 312-13, 57 S.Ct. 466, 467-68, 81 L.Ed. 666 (1937).”

“Therefore, I conclude, as a matter of law, that the Commerce Clause does not prohibit Illinois from taxing the income of the Trust, even if none of that income was earned from Illinois sources.”

RULING

To define a “resident” for purposes of an irrevocable trust, subsections 1501(a)(20)(C) and (D) of the Illinois Income Tax Act (IITA) state the following:

(C) “A trust created by a will of a decedent who at his death was domiciled in this State; and

(D) An irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable. For purpose 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.”

You have represented that the grantor was a resident of Illinois at the time the trust became irrevocable. Therefore, pursuant to IITA Section 1501(a)(20)(D), the TRUSTEE Revocable Living Trust was an Illinois resident and was required to file an Illinois income tax return under IITA Section 502(a)(2). However, you also stated that both the trustee and beneficiaries were located out of state during tax years 2019-2022.

In *Lewis Linn v. Department of Revenue*, 2013 IL App (4th) 121055, the plaintiff argued that requiring a trust to file returns and pay income tax as an Illinois resident based

TRUSTEE

Page 4

December 6, 2022

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 of the U.S. Constitution, 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

The Lewis Linn case does not apply to the situation that you have described because there are sufficient contacts between TRUSTEE Revocable Living Trust and the State of Illinois to satisfy the Due Process Clause of the U.S. Constitution given the location of trust assets in Illinois. In *Lewis Linn v. Department of Revenue*, the court distinguished that the focus on the due process analysis was on the *tax year in question*, so historic events had no influence on determining the residency of the trust.

Even if the TRUSTEE Revocable Living Trust could be considered a nonresident under the holding of the *Lewis Linn* case, the trust still was required to file an Illinois income tax return for tax years 2019-2022 because the trust's income-producing assets were located here. IITA section 201(a) imposes a tax "on the privilege of earning or receiving income in or as a resident of this State." Therefore, IITA section 502(a)(1) would require an income tax return to be filed to report the Illinois-source income.

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.

Sincerely,

Brian Fliflet
Deputy General Counsel