

IT 25-0009-GIL 09/11/2025 RESIDENCY

Changing the situs of a trust may result, depending on other relevant factors, in a change of residence for tax purposes. (This is a GIL).

September 11, 2025

NAME
ADDRESS
EMAIL

Re: Residency of trust

Dear NAME:

This letter is in response to your letter dated October 25, 2023, 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 <https://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: I am contacting you regarding the situs of the NAME Trust DTD DATE, EIN # XX-XXXXXXX. I found a letter on the Illinois Department of Revenue's web site you had written in response to another inquiry about moving the situs of a trust and hope you are the right person for me to contact. If not, could you please let me know who to reach out to. I am not sure I have the correct mailing address for you, so I am contacting you by email and through the USPS. I apologize for any confusion that may cause.

NAME was my mother and she passed away in Illinois in DATE1. I am the successor trustee to her trust. The trust was drawn up in Illinois, where she lived. All beneficiaries of the trust, including myself, would like to move the situs of the trust to STATE for the following reasons:

- All of the assets in the trust, and income from them, reside outside of Illinois. These include:
 - Four parcels of farm land in STATE which earn rental income.
 - Rental income for easement rights across one of the above parcels for planned power cables connecting turbines on a wind farm planned for the area.
 - 90 shares of stock in a company based in CITY, STATE1.
- We would like to reduce the number of tax returns the trust has to file. Currently the trust files Federal, Illinois, and STATE returns.
- Three of the four current beneficiaries of the trust reside outside of Illinois and four out of the five next generation beneficiaries live outside of Illinois. Those of us living outside Illinois would rather not have to file an Illinois income tax return in addition to our home state, Federal, and STATE returns.

Since the situs of the trust is in Illinois, the trust currently files an Illinois income tax return and pays income tax on the STATE farm rental income to Illinois. The four current beneficiaries receive Illinois K-1 forms and each of us file an Illinois income tax return. The three of us that are non-residents receive a pass-through tax credit from the trust return and receive a small refund from Illinois (less than \$100).

Since the rental income comes from STATE, the trust and the beneficiaries also file STATE income tax returns. The trust pays no taxes to STATE because all the income is passed on to the beneficiaries on STATE K-1 forms. Each beneficiary files an STATE return and pays STATE taxes on the rental income, which is reasonable. The result of this is that the STATE rental income is being taxed twice: the trust is paying taxes to Illinois and the beneficiaries are paying taxes to STATE.

I have attached to my email and included with the duplicate letter I am sending by the USPS documents and information a lawyer in STATE has sent me regarding moving the situs of a trust out of Illinois. This situation seems similar to the case described in the *Illinois Bar Journal* article included in the USPS mail and attached to the email in the file *Illinois_Bar_Journal_Article.pdf*. I am hoping, since the trust currently has no assets or income from Illinois this change in situs will be possible.

Please let me know what further actions I need to take. Thank you for considering this request.

DEPARTMENT'S RESPONSE:

In the facts listed in the letter, the current situs of the trust is Illinois although the trust assets consist of farmland in STATE. Three of the four beneficiaries live in STATE. The request is to move the situs of the trust to STATE.

35 ILCS 5/201(a) of the Illinois Income Tax Act (IITA) states as follows:

(a) In general. A tax measured by net income is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. Such tax shall be in addition to all other occupation or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof.

Therefore, if the trust is a “resident” of Illinois, it may be subject to Illinois tax.

35 ILCS 5/1501(a)(20) of the Illinois Income Tax Act (IITA) states in pertinent part as follows:

(20) Resident. The term “resident” means:

- (A) an individual;
- (B) The estate of a decedent who at his or her death was domiciled in this State;
- (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.

The residence of a trust is connected to whether the trust is irrevocable and where the grantor was domiciled when the trust became irrevocable. This issue was discussed in *Lewis Linn v. Department of Revenue*, 2013 IL.App (4th) 121055. The court found that the taxation of the trust was a violation of the due process clause due to insufficient minimum connections between the trust and Illinois. The argument was that the trust in *Linn* did not have even the minimum connections to Illinois to subject it to jurisdiction. In *Linn*, twenty separate irrevocable trusts were created. At the time of the creation, the trustee, the trust creator, and the trust assets were all located within Illinois. Over the subsequent decades, the trust assets and beneficiaries shifted until most of the assets, beneficiaries, and trustees were no longer in Illinois. At several points over the years actions were filed in Texas to realign the trusts to be regulated under Texas law, although some terms (such as “income, principal, and power of appointment”) were still defined by Illinois law. By 2004, an action was filed to construe the trusts entirely under Texas law. At this time, the

beneficiaries and assets were all located outside Illinois. In April 2007, the trust filed as a nonresident and reported no Illinois income. The trust was reclassified by IDOR as an Illinois resident and taxed 100% of the trust's reported income. The plaintiff responded that this was a violation of the due process and equal protection clauses of the United States Constitution (U.S. Constitution Art. I, Section 8, Art. IX, Section 2). "For a tax to comply with the due process clause, (1) a minimum connection must exist between the state and the person, property, or transaction it seeks to tax, and (2) 'the income attributed to the State for tax purposes must be rationally related to values connected with the taxing State.' ..." citing to *Quill Corp. v. North Dakota*, 504 U.S. 298, 306 (1992) and *Moorman Manufacturing Co. v. Bair*, 437 U.S. 267, 273 (1978). In *Linn*, the assets of the trust, the beneficiaries, the trustee and protector of the trust were all located outside Illinois by the time of the suit. The court differentiated between an *inter vivos* and a testamentary trust, finding that "[s]ince an *inter vivos* trust is not created by the probate of the decedent's will in a state court, its connection with the state has been described as more attenuated than a testamentary trust. "*Linn*, citing *Chase Manhattan Bank v. Gavin*, 733 A.2d 782 (Conn. 1999). Specifically, the court found that *inter vivos* trusts do not have as permanent of a tie to a given state as a testamentary trust. The mere fact that a grantor resided in a given state is not enough of a connection to overcome the due process argument. The court additionally found that the trust was receiving benefits and protections of Texas law by the time of the case, not Illinois law. Because the trustee, beneficiaries, trust assets, and the business of the trust were all conducted in outside Illinois, the court found insufficient contacts between the trust and Illinois to subject it to taxation within Illinois. Having decided the matter on the due process question, the court did not address the commerce clause argument.

Similarly to *Linn*, in the facts set forth in your letter, the question of trust residency depends upon the sufficiency of contacts between the trust, beneficiaries, and Illinois. Although the trust assets are located outside of Illinois, at the present time, at least one beneficiary, and one contingent beneficiary, do reside within Illinois. The trust situs may of course be changed through the actions of a court. If the situs is changed from Illinois to STATE, then the determination should be made as to whether the trust may still be considered an Illinois resident under the definition found in 35 ILCS 5/1501(a)(20), as interpreted by *Linn*.

Generally speaking a trust is taxable only on income which is not distributed or required to be distributed to beneficiaries, and beneficiaries are taxed only on the shares of trust income distributed or required to be distributed to the beneficiaries. If the trust is an Illinois resident, then 100% of the income is allocable to Illinois under 35 ILCS 5/301. This income may be allowed a credit for taxes paid to other states under Section 601(b)(3) so long as any Illinois income tax deducted in computing the federal taxable income is added back. If on the other hand the trust is not an Illinois resident, the trust income will be subject to apportionment like other nonresidents. In the case of a beneficiary who is an Illinois resident, 100% of their income is

allocable to Illinois under Section 301, although the beneficiary may qualify for a credit for taxes paid to other states.

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).

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Javonna Ackerman
Associate Counsel

JA:slc