



Virginia Passes Legislation Narrowing Definition of "Resident Estate or Trust" for State Income Tax Purposes

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On Friday, February 15, 2019, Governor Northam approved House Bill 2526 ("HB2526"), which will change the definition of "resident estate or trust" to no longer include an estate or trust being administered in the Commonwealth. The change could have particularly dramatic tax consequences for trusts created by out-of-state individuals with Virginia trustees.

Virginia imposes a state income tax on essentially all of the federal taxable income of resident estates and resident trusts. The definition of "resident estate or trust" is found in Virginia Code § 58.1-302, which provides for the following four categories of resident estates and trusts:

1. The estate of a decedent who at his death was domiciled in the Commonwealth;
2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;
3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or
4. A trust or estate which is being administered in the Commonwealth.

Currently, trusts administered by a Virginia trustee are considered "resident trusts" under the fourth category of the definition of "resident estate or trust."

Pursuant to the adoption of HB2526, the fourth category of "resident estate or trust" will be deleted from Virginia Code § 58.1-302, effective July 1, 2019, leaving only the first three categories listed above.

As a result of the change made by HB2526, it is expected that a non-testamentary trust (that is, an *inter vivos* trust) created by a person domiciled outside of Virginia will only be taxed by the Commonwealth on its Virginia source income. Thus, if such trusts do not receive Virginia source income, it is expected that they will no longer be subject to state income taxation in Virginia.

If you have any questions about federal or state income taxation of estates or trusts, including the effects of Virginia's new definition of "resident estate or trust," please contact any member of our team.

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