

# Rulings of the Tax Commissioner

**Document Number:** 14-49  
**Tax Type:** Fiduciary Income Tax  
**Brief Description:** Estates and Trusts  
**Topics:** Estates and Trusts; Filing Status; Persons Subject to Tax; Residency; Taxable Income  
**Date Issued:** 04/02/2014

---

April 2, 2014

Re: Ruling Request: Fiduciary Income Tax

Dear \*\*\*\*\*:

This will respond to your letter in which you request a nexus ruling for fiduciary income tax purposes.

## FACTS

Three Generation-Skipping Trusts (GSTs) were established outside Virginia by grantors who never resided in Virginia. None of the Trusts own property in Virginia. The Trusts are being administered in \*\*\*\*\* (State A) by a corporate trustee (Co-Trustee 1). Co-Trustee 1 administers the day-to-day operations of the GSTs including portfolio management, tax filings and execution of distributions to beneficiaries.

A Virginia resident (Co-Trustee 2) has been appointed as a co-trustee. Co-Trustee 2 would join a committee that would set annual distributions permissible by the trust documents. Co-Trustee 2 has not yet accepted the appointment. Co-Trustee 2 asks whether the GSTs would be considered to be resident trusts and have nexus with Virginia for fiduciary income tax purposes if he accepts the appointment.

## RULING

*Virginia Code* § 58.1-381 provides that all resident trusts which are required to file a federal income tax return or that have any Virginia taxable income must file an income tax return in Virginia. A "resident trust" is defined in *Va. Code* § 58.1-302 includes:

1. An estate of a decedent who was domiciled in Virginia at the time of their death;

2. A trust created by will of a decedent who was domiciled in Virginia at the time of their death;
3. A trust created by or consisting of property of a person domiciled in Virginia; or
4. A trust or estate that is administered in Virginia.

The GSTs do not fit within the first two definitions of a resident trust. Accordingly, the relevant issue would be whether they are being administered in Virginia. Title 23 of the Virginia Administrative Code (VAC) 10-115-10 provides that a trust is being administered in the Commonwealth if its "assets are located in Virginia, its fiduciary is a resident of Virginia, or it is under the supervision of a Virginia court." Under this general rule, a trust would be considered to be administered in Virginia if its trustee is a resident of Virginia.

In Public Document (P.D.) 02-101 (6/24/2002), the Department ruled that when a committee administers a trust and the members of such committee cannot exercise control of the trust individually, membership in the committee by a Virginia resident or residents would not make the trust a "resident trust" for Virginia fiduciary income tax purposes, so long as the committee does not operate in Virginia or is not controlled in Virginia. See also P.D. 07-164 (10/10/2007) and P.D. 13-18 (2/05/2013).

According to the request, Co-Trustee 2 is a resident of Virginia who would not make decisions regarding the GSTs individually. Instead, his authority would be limited to participating in committee meetings in State A for the purpose of setting distribution amounts from the GSTs. Under these circumstances, the GSTs would not be administered in Virginia and would not be considered resident trusts for fiduciary income tax purposes. Accordingly, the GSTs would not be required to file Virginia fiduciary income tax returns.

This ruling is based on the facts presented as summarized above. Any change in facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* sections, regulation and public documents cited are available online at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules & Decisions section of the Department's website. If you have additional questions, please contact \*\*\*\*\* in the Office of Tax Policy, Appeals and Rulings Division, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

AR/1-5565832748.o

---