



Date: 04.21.15

Information Letter: 2015-02



Re: California Filing Requirement for [REDACTED] Trust

Dear Mr. [REDACTED]

In your correspondence dated [REDACTED] 2014, you request a response as to whether or not a 2013 California State Income Tax Return is required for a trust with one trustee as a resident of California. The purpose of this letter is to provide clarification of how California taxes trusts. Please be aware, however, that this letter is being provided to you for informational purposes only and may not be considered "written advice from the Board" within the meaning of Revenue and Taxation Code section 21012. You should also be aware that this discussion is subject to change in the event of a change in relevant statutory authority, judicial or administrative case law, or a change in federal interpretation of federal law where the discussion is based upon such interpretation.

A trust is a taxable entity separate and apart from its beneficiaries.¹ In order for California to tax the income of a trust, one or more of three separate elements must be present: (1) the trust must have income from California sources;² (2) a trustee of the trust must be a resident of California;³ or (3) a non-contingent beneficiary of the trust must be a resident of California.⁴ Under both Federal and California law, non-grantor trusts are taxable at the trust level on accumulated income.⁵ In general, trusts receive a deduction for amounts of income distributed to beneficiaries in the taxable year and accordingly, the tax paid by a trust will be a tax on income that is

¹ Int. Rev. Code section 641; Cal. Rev. & Tax. Code section 17731 (conformity with Federal law).

² Cal. Rev. & Tax. Code section 17951 (California source income).

³ Cal. Rev. & Tax. Code sections 17742 and 17743 (apportionment to resident trustees).

⁴ Cal. Rev. & Tax. Code sections 17742 and 17744 (apportionment to resident beneficiaries).

⁵ Int. Rev. Code section 641; Cal. Rev. & Tax. Code section 17731, et seq.

accumulated by the trust.⁶

All of a trust's California source income is taxable by California, regardless of where the trust is managed or where the beneficiaries reside. The remaining income of a trust (i.e., the non-California source income) will be taxable by California based on a residency theory if the trust has a California resident fiduciary or California resident non-contingent beneficiary.⁷ Essentially, if either all of the fiduciaries or all of the non-contingent beneficiaries of a trust are California residents, the trust's income will be wholly taxable by California.⁸ Where there are multiple fiduciaries or non-contingent beneficiaries with varying residencies, California taxes the trust income based on the proportion of its California resident and non-resident fiduciaries and California resident and non-resident, non-contingent beneficiaries.

In summary, a trust is taxable first on all of its California source income and is next taxed on a portion of its non-California source income that reflects the proportion of California-resident fiduciaries and non-contingent beneficiaries, and non-resident fiduciaries and non-contingent beneficiaries.⁹

As you provided, the [REDACTED] a [REDACTED] Trust account, has at least one trustee that is a resident of California. No information regarding the source of the trust income or the residence of the beneficiaries (and the contingent versus non-contingent nature of those beneficiaries) has been provided. Assuming the [REDACTED] trust had no California source income and no California resident non-contingent beneficiaries, the trust would still be taxable on the portion of its non-California source income that reflects the proportion of California-resident trustees (of which there is at least one) and non-resident trustees. Therefore, the [REDACTED] would have a filing requirement based on this taxable income.

Sincerely,

Sara A. Hosey
Tax Counsel

⁶ Int. Rev. Code sections 651 – 662; Cal. Rev. & Tax. Code section 17731, et seq.

⁷ Cal. Rev. & Tax. Code sections 17742, 17743, 17744.

⁸ Cal. Rev. & Tax. Code section 17742.

⁹ 18 Cal. Code Reg. 17743.