

Administrative Release No. 16

Subject: Fiduciaries, Including Estates and Trusts.

I. Who is a Fiduciary?

A. In General

A fiduciary is any person who is required to file a federal fiduciary income tax return, including a return for an estate or a trust.

B. Personal Representative of an Estate

Before 1992, Maryland did not include in its definition of a fiduciary a personal representative of an estate if the estate was subject to the inheritance tax. Chapter 1 of the Acts of 1992 (First Special Session) amended the law to include a personal representative of an estate in the definition of a fiduciary under the Maryland income tax laws. Because of this change, an estate may be subject to both Maryland income and inheritance taxes. The effective date of the Act was May 1, 1992, and it applies to all tax years beginning after December 31, 1991.

II. Resident and Nonresident Fiduciaries

A. In General

A fiduciary is either a resident or a nonresident. The determination of residence is important for the following three reasons:

1. A resident fiduciary, like a resident individual, is subject to tax on all of its income regardless of its source. A nonresident fiduciary, like a nonresident individual, is subject to tax on income from Maryland sources, which includes any income derived from real property or tangible personal property located in Maryland; income derived from a business wholly or partially carried on in Maryland and in which the trust or estate is a member of a pass-through entity; income from an occupation, profession or trade carried on wholly or partially in Maryland; and income from wagering in Maryland.

2. A resident fiduciary who is subject to tax in another state on the same income subject to tax in Maryland may claim a credit on the Maryland fiduciary income tax return (Form 504). A nonresident may not claim a credit on the Maryland

fiduciary income tax return (Form 504) for income subject to tax in Maryland and another state.

3. A resident fiduciary is subject to the county income tax imposed under Title 10 of the Tax-General Article. A nonresident fiduciary is subject to the special nonresident tax (see Section IV).

B. Who is a Resident Fiduciary?

Chapter 1 of the Acts of 1992 clarified and broadened the rules for determining who is a resident fiduciary. See § 10-101 of the Tax-General Article of the Annotated Code of Maryland.

1. Personal Representative of an Estate.

A fiduciary who is a personal representative of an estate is considered a resident of Maryland if the decedent was domiciled in this State on the date of the decedent's death.

2. A Fiduciary Other than a Personal Representative.

A fiduciary, other than a personal representative, is considered a resident of Maryland if:

a. The trust was created, or consists of property transferred, by the will of a decedent who was domiciled in this State on the date of the decedent's death;

b. The creator or grantor of the trust is a current resident of this State; or

c. The trust is principally administered in this State.

C. Who is a Nonresident Fiduciary?

A nonresident fiduciary is a fiduciary that is not considered a resident of Maryland.

III. Requirements for Filing a Maryland Fiduciary Return

A. Residents and Nonresidents

The requirements for filing a resident or nonresident Maryland fiduciary income tax return

are provided for under § 10-813 of the Tax-General Article of the Annotated Code of Maryland.

A fiduciary must file a Maryland fiduciary income tax return if the fiduciary:

1. Is required to file a federal fiduciary income tax return; and
2. Has Maryland taxable income.

The term “Maryland taxable income” means Maryland adjusted gross income less the exemptions and deductions provided for under Title 10 of the Tax-General Article.

For a fiduciary, Maryland adjusted gross income is the fiduciary’s federal taxable income increased by the deduction allowed as a personal exemption under § 642(b) of the Internal Revenue Code and further modified by the additions and subtractions required of an individual, found in Subtitle 2 of Title 10 of the Tax-General Article. In addition, certain fiduciaries are allowed a special nonresident beneficiary subtraction (see below Subsection B). Therefore, some fiduciaries may be required to file a federal fiduciary income tax return, but may not be required to file a Maryland fiduciary income tax return if there is no Maryland taxable income.

B. Nonresident Beneficiary Subtraction

The nonresident beneficiary subtraction may be claimed by a resident fiduciary as provided for under § 10-207(o) of the Tax-General Article of the Annotated Code of Maryland to the extent the subtraction amount is included in its federal taxable income. This subtraction includes (1) income derived from intangible personal property that is held in trust for the benefit of a nonresident or a corporation not doing business in the State and (2) capital gain income derived from the sale or other disposition of intangible personal property that is held in trust, if the proceeds thereof are added to the principal of the trust, and all the remaindermen of the trust in being are nonresidents during the entire taxable year or corporations not doing business in the State. Thus, this subtraction is divided into two separate provisions.

In order for the first provision (1) to apply, the income must be derived from intangible personal property and the income must be accumulated and held in trust for the benefit of a nonresident beneficiary or corporation not doing business in Maryland. In order for second provision (2) to apply, the income must be capital gain income

derived from the sale or other disposition of intangible personal property that is held in the trust; the proceeds from that sale or other disposition must be added to the principal of that trust (accumulated in that trust) for the benefit of a nonresident; and all of the remaindermen of the trust in being must be nonresidents during the entire taxable year or corporations not doing business in Maryland.¹

Also, for either of these provisions to apply the subtraction amount that is being claimed must actually be for the benefit of a remainderman in being that is a nonresident or corporation not doing business in Maryland. In addition, the nonresident beneficiary cannot possess an inter vivos power of appointment over such income, nor can the fiduciary possess a discretionary power to distribute such income of the trust to himself or herself, unless such discretionary power is limited to ascertainable standards as defined by Section 2041(b)(1)(A) of the Internal Revenue Code.

C. Forms

A resident or nonresident fiduciary that is required to file a Maryland fiduciary income tax return shall use Form 504 and file Maryland Form 504 Schedule K-1 for each of its beneficiaries with Form 504.

A nonresident fiduciary should also file, for all taxable years beginning before January 1, 2008, the Maryland Form 504 NR to compute the Maryland modification for income or losses from non-Maryland sources. For all taxable years beginning after December 31, 2007, the non-resident fiduciary should file Maryland Form 504NR.

A resident fiduciary claiming the nonresident beneficiary subtraction (see Section III.B) must also submit the following documentation:

1. A copy of the federal Form 1041 and all schedules relating to the type(s) and source(s) of income claimed in the nonresident beneficiary subtraction.

¹ An addition for capital losses derived from the sale or other disposition of intangible personal property that is held in trust may be required if the proceeds are added to the principal of the trust and all of the remaindermen in being are nonresidents during the entire tax year or corporations not doing business in the State. See § 10-204(g) of the Tax-General Article of the Annotated Code of Maryland.

2. A list of all beneficiaries, including remaindermen, their domiciliary addresses for the taxable year, and the applicable social security or employer identification numbers. Clearly indicate whether the beneficiaries are income beneficiaries, remaindermen, or both.

3. A list of the amount of intangible income accumulated for each beneficiary identified in 2.

4. A list of all persons who possess a power of appointment over the trust assets.

The nonresident beneficiary subtraction is denied if a fiduciary claiming the subtraction modification fails to submit the documentation.

D. Due Dates

A fiduciary who must file a Maryland fiduciary income tax return, Form 504, shall file the return:

1. On or before April 15th of the next taxable year; or

2. If the income tax is computed for a fiscal year, on or before the 15th day of the 4th month after the end of that year.

E. Extensions

A fiduciary may request an automatic 6-month extension of time to file the Maryland fiduciary income tax return, Form 504. The fiduciary shall file the request by filing Maryland Form 504E.

IV. Local Income Tax or Special Nonresident Tax

A. Local Income Tax

Resident fiduciaries, including fiduciaries of estates and trusts, are required to pay the local or county income tax imposed under Title 10 of the Tax-General Article. Section 10-103 of the Tax-General Article sets forth the rules for determining the county the fiduciary must use in computing and reporting the tax.

1. A Personal Representative

A personal representative of an estate must compute and report the local income tax using the rate for the subdivision where the decedent was domiciled on the date of death.

2. Fiduciaries Other Than Personal Representatives

Fiduciaries, other than personal representatives, must compute and report the local income tax:

a. Based on the subdivision in which the trust is principally administered; or

b. If the trust is not principally administered in this State, based on the subdivision in which:

(1) The decedent was domiciled on the date of death, if the fiduciary is a resident under Section II.B.2.a.; or

(2) The creator or grantor is a current resident, if the fiduciary was a resident under Section II.B.2.b.

B. Special Nonresident Tax.

For taxable years beginning after December 31, 2003, a nonresident fiduciary is subject to the special nonresident tax under § 10-106.1 of the Tax-General Article, which is imposed at a rate equal to the lowest county income tax rate set by any Maryland county.

V. Estimated Tax Returns

A. Requirement to File

1. In General

A fiduciary who reasonably expects estimated income tax for a taxable year on income not subject to withholding (employer wage withholding, or other payments subject to withholding, see Subtitle 9 of the Tax-General Article of the Maryland Code Annotated) to exceed \$500 shall file a declaration of estimated income tax.

2. Exception

A fiduciary who is a personal representative of an estate is not required to file an estimated tax return for any taxable year ending before the date which is 2 years after the date of the decedent's death.

B. Computation

A fiduciary may use the federal method of annualization of income in computing estimated tax.

C. Forms

A fiduciary that is making an initial payment of estimated tax should use a Form 504D. Form 504D should be used for additional quarterly payments as well. For each tax year, the fiduciary should use the estimated tax worksheet on Form 504D to compute total projected estimated tax and the

quarterly payment amounts in order to avoid possible underpayment penalty and interest. See Form 504UP.

D. Due Dates

1. In General

A fiduciary that is required to file a declaration of estimated tax shall file a quarterly estimated tax return and pay the tax due on or before April 15, June 15, September 15 and January 15.

2. Exception

If a fiduciary elects to pay the income tax in full on or before January 31, instead of filing the quarterly estimated tax return required on January 15, the individual shall file a final income tax return Form 504 on or before January 31.

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