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Study 6:

**State Taxation on Income of
Trusts with Multi-State Contacts**

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CAVEAT

The information compiled in this study is intended to provide the reader with a preliminary overview, state by state, of:

- (1) The kinds of contacts with each state that will require a trust to file state income (and/or similar) tax returns for that state and
- (2) The extent of the income (and/or similar) tax liability that will result from such contacts between the trust and that state.

However, to properly understand the impact of a state's income (and/or similar) taxation of a trust having any contact with that state will require:

- (a) Careful study of the laws of that state and
- (b) An understanding of the limitations imposed by the US Constitution on the state taxation of trusts.

The problems of the taxation of the income of a trust engaging in businesses of a unitary nature in several states is beyond the scope of this study.

GENERAL NOTE

Having contacts with two or more states can result in a trust having state income (and/or similar) tax liability to:

- (i) Two or more states,
- (ii) One state only, or
- (iii) No state

depending on the laws of the states involved and the nature of the trust/state contact(s) in each instance.

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THE APPLICABLE FEDERAL AND STATE LAW

A. The Federal Scheme

1. Trust as a Conduit.

The federal income taxation of trusts is set forth in Subchapter J of the Internal Revenue Code of 1986 (Sections 641 through 692). The statutory scheme can best be understood if one understands that although under tax law the trust is treated as an entity separate and apart from its beneficiaries, it largely serves as a conduit for the income earned by the trust until its ultimate distribution to the beneficiaries.

The conduit treatment is achieved by allowing the trust a deduction for amounts that are distributed to beneficiaries during the taxable year to the extent of the distributable net income of the trust for that taxable year. Such distributions are includible in the gross income of the beneficiaries to the extent of the distributable net income of the trust and, in general, the character in the hands of the beneficiary of amounts distributed by the trust is the same as it was in the hands of the trustee. H.R. Rep. No. 426, 99th Cong., 1st Sess. 804 (1985).²

2. Role of Distributable Net Income.

Although trust income is determined in accordance with state law or the terms of the trust (Reg. § 1.643(b)-1), trust income for income tax purposes is determined as defined in the Internal Revenue Code. IRC §641. However, the character of any distribution from a trust is determined by the concept of distributable net income ("DNI"). IRC §643(a).

Basically, DNI is the trust's taxable income as defined in IRC §63 computed with modifications set forth in §§ 1.643(a)-1 through 1.643(a)-7 of the Treasury Regulations. Probably the key adjustment is with respect to capital gains and losses. Capital gains are not included in DNI unless they are allocated to income under the terms of the governing instrument or local law by the trustee on its books or by notice to the beneficiary, allocated to principal and actually distributed to beneficiaries during the taxable year, or utilized (pursuant to the terms of the trust or the practice followed by the trustee) in determining the amount which is distributed or required to be distributed. Treas. Reg. § 1.643(a)-3(a). Capital losses are not included except to the extent that they enter into the determination of any capital gains that are paid, credited, or required to be distributed to any beneficiary during the year or in the year of the final termination of the trust. Treas. Reg. §§1.643(a)-3(b), 1.642(h)-1.⁷

3. Allocation of Taxable Income.

As a general rule, income which is distributed to a beneficiary is taxed to the beneficiary and income retained by the trustee is taxed to the trustee. IRC §§641, 652,662.

If the trust is required to distribute its income currently, has no charitable beneficiaries and distributes no principal during the year (a "simple" trust), the trust income will be taxed to the beneficiary whether or not the trustee distributes anything to the beneficiary. IRC §652. However, the taxable income will be limited to the trust's DNI for that year. IRC §652(b). In turn, the trust is entitled to a deduction limited to the trust's DNI. IRC §651(b).

If the trustee has discretion to distribute or accumulate income, distributes principal in the year or the trust has charitable beneficiaries (a "complex" trust), the trust is allowed a deduction for income that is required to be distributed for the year whether or not actually distributed and for all other amounts that are property paid, credited or required to be distributed for that year, but limited to the trust's DNI. IRC §661.

However, when there are multiple beneficiaries to a trust or estate, the separate shares are treated as separate trusts for purposes of calculating DNI. Separate shares exist when the economic interests of a beneficiary are sufficiently independent that they neither affect nor are affected by the interests of the other beneficiaries. Reg. Sec. 1.663(c)-4(a). Separate shares always exist if the interest in the trust or estate is (1) a spouse's elective share; (2) a formula pecuniary bequest; (3) a qualified revocable trust (QRT); or (4) income on specifically bequeathed property. Reg. Sec. 1.663(c)-4(c).

Once the separate shares are determined, gross income and deductible expenses are allocated among the shares in accordance with the amount that each is entitled to under the applicable law. Reg. Sec. 1.663(c)-2(b)(2). Disbursements to a beneficiary are treated as income to the beneficiary, while retained amounts are taxed to the trust or estate. The exception is income in respect of a decedent (IRD). Reg. Sec. 1.663-2(b)(3). IRD is allocated to all shares which could potentially be funded with these amounts whether or not they are actually funded. However, a specific direction in the governing instrument about the allocation of IRD would defeat this rule.

4. Tier System.

Whenever the trust has both mandatory and discretionary income recipients or multiple recipients of mandatory payments and discretionary payments or both, there is a need to allocate DNI among the distributees — the so-called “Tier System”.

“First Tier” distributees are those who have a legally enforceable right, using trust accounting rules, to a current distribution of income from the trust. IRC §§652(a), 662(a)(1). DNI will be prorated among these distributees with each taking his or her pro rata share of dividends, interest, tax exempt income and other income included in DNI in the year of distribution.

“Second Tier” distributees are all others who receive distribution but have no legally enforceable right to a distribution of income. IRC §662(a)(2). Distributions to second tier distributees will constitute taxable income only to the extent that the first tier distributees did not exhaust DNI. The DNI remaining unallocated after allocation to first tier distributees is pro rated among the second tier distributees with each taking his or her pro rata share of dividend, interest, tax exempt and other income.

5. Throwback Rule.

The so-called “throwback rule” was embodied in IRC §§665 through 667 but has been repealed for domestic trusts as of 1997. Taxpayer Relief Act of 1997, Pub.L.No. 105-34, Sec. 507, 111 Stat. 788 (1997). Now the throwback rule only applies to foreign trusts. I.R.C. Sec. 665(c)(2), (d)(2), (e)(1).

B. Constitutional Limitations

1. General Taxation Powers.

The power of the state to tax is inherent in its sovereign powers and is well established. “Unless restrained by constitutional provisions, the sovereign has power to tax all persons and property within its jurisdiction and enjoying the benefits and protection of its Laws.” *Haavik v. Alaska Packers Ass’n.*, 263, U.S. 510, 514 (1924). Further, “the power of the State as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.” *Shaffer v. Carter*, 252 U.S. 37,52 (1919), citing *State Tax on Foreign-Held Bonds*, 15 Wall. 319. Thus, a state has the power to impose taxes on property within its jurisdiction and the income of persons within its jurisdiction.

The constitutionality of state taxation of income of nonresidents derived from sources within the state was upheld in the *Shaffer* case as long as the taxes on the income of nonresidents is not more onerous in effect than those imposed under like circumstances upon residents of the taxing state. *Id* at 53. Taxes on the income of residents and on income derived within the state by nonresidents were deemed reasonable in exchange for the state’s laws from which “property, business and industry derive protection without which production and gainful occupation would be impossible.” *Shaffer v. Carter, supra*, at 50. Conversely, the Supreme Court has stated:

“If the taxing power be in no position to...benefit the person or property taxed, and such property be wholly within the taxing power of another State, to which it may be said to owe an allegiance and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, and has been repeatedly held by this court to be beyond the power of the legislature and a taking of property without due process.” *Union Transit Co. v. Kentucky*, 199 U.S. 194, 202 (1905).

2. Contacts or Nexus Supporting State Taxation.

The U.S. Supreme Court has stated “The course of decisions does reflect at least consistent adherence to one time-honored concept: that due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.” *Miller Bros. v. Maryland*, 347 U.S. 340, 344-45 (1953). Thus, the issue in supporting the state’s right to tax a multi-jurisdictional trust is to determine whether the contacts with the state are sufficient to invoke the protection of its laws and thus entitle the state to levy income taxes in exchange for the protection provided.

A state may constitutionally tax all the income its residents earn regardless of where the taxpayer earns the income. *Oklahoma Tax Comm’n. v. Chickasaw Nation*, 515 U.S. 450, 462-63 (1995) Likewise, a trust that is a resident of a state is subject to tax on the trust’s entire undistributed income and gain. *New York ex rel. Cohn v. Graves*, 300 U.S. 308 f(1937). However, states do not use a uniform test to define a “resident trust.” See, Max Gutierrez, Jr., *Oops! The State Income Taxation of Multi-jurisdictional Trusts*, 25 *U. Miami Heckerling Inst. on Est. Plan.* 12 (1991).

A state's power to tax resident and non-resident trusts is governed by the due process clause and the commerce clause of the U.S. Constitution. Under the due process clause, state jurisdiction to tax non-resident income from interstate commerce must meet two requirements. First, there must be a minimal connection between the interstate activities and the taxing state. Second, there must be a rational relationship between the income attributed to the State and the services and protections the state provides. It is accepted that residency provides the required connection with the state to constitutionally justify taxation of the resident's income. See, *Quill Corp. v. North Dakota*, 504 U.S. 298, 306 (1992); *Moorman Mfg. Co. v. Blair*, 437 U.S. 267, 273 (1978); *Miller Bros. Co. v. Maryland*, 347 U.S. 340 U.S. 340, 344-45 (1954).

Several state courts have decided the degree of contacts required by the due process clause before a trust may be taxed as a resident. Courts almost uniformly had held that a state's classification of a trust as a "resident," based solely on the settlor's residency at death or at the time the trust became irrevocable, is an insufficient nexus for a state's taxation of the trust's entire undistributed income. In a 1987 seminal case, *John S. Swift, Jr., Trust v. Dir. of Revenue*, 727 S.W.2d 880, (Sup.Ct. Mo., 1987), the Missouri Supreme Court gave a summary of the factors involved in determining the sufficiency of the nexus. There were

[“six points of contact [to consider]; (1) the domicile of the settlor, (2) the state in which the trust is created, (3) the location of trust property, (4) the domicile of the beneficiaries, (5) the domicile of the trustees, and (6) the location of the administration of the trusts. For purposes of supporting an income tax, the first two of these factors require the ongoing protection or benefits of state law only to the extent that one or more of the other four factors is present.” *Id.* at 882.

Further, the nexus must be measured as of the time the justification for the tax is determined. In *Swift v. Missouri*, the controversy concerned a testamentary trust created by a decedent domiciled in Missouri at the time of death, but with trust property, trust administration, trust beneficiaries and trustees all then located outside of Missouri. The court noted:

“An income tax is justified only when contemporary benefits and protections are provided the subject property or entity during the relevant taxing period...For purposes of supporting an income tax, the first two [domicile of settlor and state of creation] factors require the ongoing protection or benefit of state law only to the extent that one or more of the other four factors is present.” *Id.* [emphasis added].

The Court found that the State of Missouri did not provide sufficient contemporary benefits and protections during the period being assessed to provide the nexus for the state to constitutionally tax the income of the trust.

Accordingly, under the *Swift* line of cases, the first two factors or one alone [domicile of settlor and state of creation], without more, are insufficient to support nexus for the taxation of the income of the trust. Of the four remaining points discussed by the Court, presence of trusts assets, beneficiaries, trustees or administration of the trust within the state, all but the presence of beneficiaries will support state income taxation of a trust.

Contrary to the *Swift* line of cases, the Connecticut Supreme Court in *Chase Manhattan Bank v. Gavin*, held that Connecticut may constitutionally declare testamentary trusts “residents” when the settlor is domiciled in the state at death. *Chase Manhattan Bank v. Gavin*, 733 A.2d at 782 (Conn. 1999). The court also held that it does not violate the constitution for Connecticut to declare *inter vivos* trusts “residents” when the settlor is domiciled in the state at the time the trust becomes irrevocable and any noncontingent beneficiary is a resident of the state. The Connecticut Supreme Court held that these contacts provided a sufficient nexus between the trust and Connecticut to allow Connecticut to levy tax consistent with the U.S. Constitution. The court stated that the state could tax all the undistributed income of the trusts because they were residents.

Chase v. Gavin, involved four testamentary trusts created by people who were residents of Connecticut at death and one *inter vivos* trust created by a person who was a Connecticut resident when the trust became irrevocable. After the settlors created the trusts, the trusts only connections to Connecticut consisted of three of the five trusts having one or more Connecticut resident beneficiaries. Also, the state's probate laws required two of the testamentary trusts to submit regular accountings (One of the four trusts, the Dallett trust had submitted six accountings and another, the Worcester trust had submitted forty-one accountings) and required two of the testamentary trusts to submit final accountings. The trustee, trust assets, income sources, and trust administration were all located outside Connecticut. However, state law considered the trusts “residents” and subject to full taxation. The court held the state law was constitutional because the trusts were initially created through a Connecticut resident they were therefore benefiting from the protection of the state law, regardless of any future contacts with the state. *Chase Manhattan Bank v. Gavin*, 733 A.2d at 799-800.

Gavin holds that the state's taxation of the *inter vivos* trust as a resident did not violate the due process clause. *Gavin's* holding is in clear conflict with *Safe Deposit & Trust Co. v. Virginia*. *Safe Deposit & Trust Co. v. Virginia*, 280 U.S. 83 (1929). In *Safe Deposit*, the U.S. Supreme Court held that Virginia violated the due process clause when it taxed intangible trust assets of a trust that was created by a Virginia resident, but the trustee and trust assets were located in another state, and the beneficiaries were Virginia residents. The court reasoned that because no person in Virginia had the legal or equitable right to control the trust's assets the state lacked the power to tax the trust as a domiciliary because of a great risk of double taxation. The *Gavin* opinion expressed doubt that *Safe Deposit* was good law because the due process jurisprudence had abandoned the concern over possible double taxation of intangibles. *Chase Manhattan Bank v. Gavin*, 733 A.2d at 802.

The District of Columbia Court of Appeals also departed from *Swift* in *District of Columbia v. Chase Manhattan Bank*, holding that the District's trust residency statute was constitutional. *District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539, 543 (D.C. 1997). In *D.C. v. Chase*, the District taxed as a resident trust a testamentary trust created by a District resident at his death. The trustee challenged the state's tax scheme as violating the due process clause because the trustee argued there was not a sufficient nexus between the trust and the District. (The trustee did not challenge the state's trust residency law on commerce clause grounds, 689 A.2d at 542 n.7.). The trustee, trust assets, and current beneficiaries lived outside the District. The District's courts received annual trust accountings and handled litigation regarding the trust on several occasions. The trial court held that the settlor's residence in the District at death failed to provide the required due process connection to allow the District to fully tax the trust.

On appeal, the Court of Appeals reversed and held that the U.S. Supreme Court's decision in *Quill v. North Dakota* (504 U.S. 298, 307-08 (1992)) repudiated the *Swift* line of cases. The *Swift* cases, the court reasoned, relied too heavily on the physical presence of the trust, which *Quill* discarded as the due process standard. The *D.C. v. Chase* court also relied on the trust owing its very existence to District law. 689 A.2d at 543 The court analogized a trust to a corporation, and reasoned that the District has jurisdiction to tax a corporation created under its laws therefore it has the power to tax a testamentary trust created through the District's probate laws. The general principles of trust law gave the District subject matter jurisdiction over numerous matters concerning the trust including a claim for breach of fiduciary duty against the trustee. The court also stated that tax credits eliminated the possibility of multiple taxation.

3. Double Taxation.

The U.S. Supreme Court has held that state taxation of inter-state commerce that is unapportioned and thus resulting in potential double taxation of business is unconstitutional as a violation of the Commerce Clause [U.S. Constitution art. 1, §8, cl.3.]. *Western Union Tel. Co. v. Kansas ex rel. Coleman*, 216 U.S. 1 (1910). However, the Court has not applied the Commerce Clause to the income taxation of trusts, not has it ruled that potential double taxation that might result in the context of the taxation of trust is violative of due process.

In *Greenough v. Tax Assessors*, 331 U.S. 486 (1946), the court upheld a personal property tax on one half of the value of a trust corpus (consisting of intangible property held in another state) where one of two trustees was a resident.

The U.S. Supreme Court has upheld the constitutionality of state taxation of a resident beneficiary's receipt of income from a multi-jurisdictional trusts even though the income was previously taxable to the trust itself. *Maguire v. Tefery*, 253 U.S. 12 (1938); *Guaranty Trust Co. v. Virginia*, 305 U.S. 19 (1938). When a taxpayer has sufficient nexus with different states each may tax the taxpayer. As the Court noted in *Curry v. McCanless*, 307 U.S. 357,367 (1938):

“When a taxpayer extends his activities with respect to his intangibles, so as to avail himself of the protection and benefit of the laws [nexus as defined supra] in such a way as to bring his person or property within the reach of the tax gatherer there, the reason for a single place of taxation no longer obtains.”

Thus, if a state has a sufficient nexus with the trust it may tax the income of the trust without regard to double taxation resulting from another state also levying a tax on the same income. While many states allow trusts some form of credit for taxes paid to other states, it is not constitutionally required. See, *Trust Administration & Taxation*, Vol. 3, §50.21, *Wygate and McDaniel, Matthew Bender*, 2nd Edition.

In *Chase v. Gavin*, the court also held that under the commerce clause the state's taxation of trust income was constitutional. 733 A.2d at 803-04. The commerce clause prevents state taxation that unfairly burdens interstate commerce. The U.S. Supreme Court will find a state tax on interstate commerce valid when the tax is: 1) applied to an activity with a substantial nexus to the taxing state; 2) is fairly apportioned; 3) does not discriminate against interstate

commerce in favor of intrastate commerce; and 4) is fairly related to the services provided by the taxing state. *Complete Auto Transit v. Brady*, 430 U.S. 274, 279 (1977) (announcing the four part test courts must use to evaluate whether a state taxation scheme violated the commerce clause). In *Quill*, the U.S. Supreme Court affirmed the above four part commerce clause test. *Quill* further held that a state could not tax a non-resident mail order company's income from the state under the commerce clause without physical presence in the state because there was not a substantial nexus to the taxing state. In *Gavin*, the court did not specifically address any part of the four part test. Instead the court concluded that the state law did not violate the commerce clause because any multiple state income taxation was speculative. *Chase Manhattan Bank v. Gavin*, 733 A.2d at 804.²⁸

4. Unconstitutional Tax.

States are particularly concerned with the consequences of collecting taxes under the provisions of legislation which proves to be unconstitutional since the U.S. Supreme Court's decision in *McKesson v. Division of Alcoholic Beverages & Tobacco, Dept of Business Regulations of Florida, et al.*, 495 U.S. ___, 110 L.Ed.2d 17, 110 S.Ct ___ (1990).

In *McKesson*, the Court examined the scope of a state's obligation to provide retrospective relief as part of its postdeprivation procedure in cases where its has collected taxes under a state statute later found to be unconstitutional. By "postdeprivation" is meant a statutory scheme where the state statute has not allowed taxpayers to litigate their tax liabilities prior to payment of the tax. The Court found that due process requires that the "...State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a 'clear and certain remedy,' ...for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one." 110 L.Ed.2d 17 at 37.

McKesson involved a discriminatory tax and the Court found that appropriate relief might take the form of a refund, a retroactive tax assessment within constitutional restraints to make the tax burden of the taxpayers commensurate with those of the advantaged class, or a combination to the two. In the usual case, the appropriate remedy would seem to be a refund even though, as was argued in the case, it would have serious economic consequences on the state.

C. Discussion Of Specific Contacts

1. Source of Income Within State.

Virtually all of the states which impose an income tax on trusts will tax the income from sources derived within the state. The presence of income producing property or activity within the state will be a sufficient nexus for the state to tax the income from such property or activity.

The constitutionality of the taxability of the income of nonresidents derived from local sources has been upheld by the U.S. Supreme Court. As stated by the Court in *Shaffer v. Carter*, 252 U.S. 37 (1920):

Just as a state may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon the incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein, enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders.

Such income usually includes income attributable to the ownership of real or tangible property located in the state, to the conduct of a business, profession, occupation or trade within the state or to intangible property which has acquired a business situs in the state. Thirty two states will impose an income tax on the income of a trust derived from sources within the state.

The District of Columbia imposes an unincorporated business income tax and corporate franchise tax with respect to certain D.C. source income of trusts.

2. Residency of the Settlor.

The residency or domicile of the settlor is used as the starting point for taxing the trust in a number of states which purport to tax the income of "resident trusts" defining the trust as one where the creator of a testamentary trust was domiciled in the state at the date of death or where the creator of the trust was domiciled in the state when the trust became irrevocable where the trust was created *inter vivos*. See, for example, Connecticut, District of Columbia, Michigan, Missouri, New York and Virginia. These same states will tax nonresident trusts only on income derived from sources within the state.

There are at least sixteen states and the District of Columbia which will impose an income tax on the trust

where the only contact with the state is that the settlor resided in the state at the time the trust was created or, in the case of a revocable trust, when the trust became irrevocable. Of those, eight provide an exception for trusts as to which the settlor is considered the owner under federal law.

a. Treatment of “Grantor” Trusts.

It is unclear under the laws of the District of Columbia whether the income of a revocable trust created by a nonresident who subsequently becomes a resident will become subject to income tax if the trust becomes irrevocable during the settlor’s residency in the District. The District will probably take the position that it will.

In Illinois, the trust will be treated as irrevocable on the date the settlor ceases to be treated as a grantor under IRC §§671-678.

In Utah, only trusts created by the will of a person domiciled in Utah at the date of death fall within the rule and there is no case testing the constitutionality of the tax based on this sole contact.

b. Residency of the Settlor and Presence of Trust Assets.

Even where the state statute defines a “resident trust” to include a trust created by a resident of the state at the time the trust became irrevocable and some of the trust property is situated in the state, the state may not have sufficient nexus with the trust to tax its income.

In *Blue v. Michigan Department of Treasury*, Court of Appeals, No. 116666, Sept. 11, 1990, a Michigan resident created a revocable trust and then died while residing in Michigan at which time the trust became irrevocable. Michigan law defines any trust which was created in Michigan and became irrevocable in Michigan as a “resident trust” subject to Michigan income tax. M.C.L. §206.18; M.S.A. §7.557(118). Both the income beneficiary and the trustee were Florida residents. All of the trust’s assets and other indicia of ownership were located in Florida, except one non-income producing parcel of real estate located in Michigan. All brokerage accounts and bank accounts were held and administered in Florida and the trust was recorded in the State of Florida. For five years, the trustee filed Michigan tax returns and declared net annual income which was accumulated in the trust and not distributed to any beneficiaries. The trustee brought the action to recover taxes paid to Michigan on the income accumulated in the trust.

Michigan argued that the continuing “residency” of the trust within Michigan and the benefits and protection of the laws of the state extended to the trust established the requisite nexus and jurisdiction to impose a tax. Citing the *John Swift and Mercantile* cases, the Court held that there were insufficient connections between the trust and the State of Michigan to justify the imposition of an income tax. The Court noted that the only property in Michigan was non-income producing and that the “protections” extended to the trust by classifying it as a resident trust were illusory considering that the trust was registered and administered in Florida. In conclusion, the Michigan statute was held unconstitutional in violation of the due process clause of the Fourteenth Amendment in defining the trust as a resident trust subject to Michigan tax.

3. Residency of a Trustee.

The presence of the trustee within the state should be sufficient nexus to tax the income of the trust even if it is the only contact with the state. Because the trustee is the legal owner of the assets of the trust, the state may tax the trustee as if taxing a resident for income earned from assets not within the state. *Shaffer v. Carter, supra*. The trustee may arguably be said to hold an equitable interest for the beneficiary. *Trusts and Trustees Rev. 2d § 1, Bogert* (1984). In any case, the trustee is a titleholder of property for the benefit of another.

The residency of one or more of the trustees has been the contact justifying the imposition of the tax in some states, although usually in conjunction with some other factor. Although the settlor of the trust was a nonresident, a resident trustee was held taxable on income accumulated for unborn or unascertained beneficiaries under a statute taxing trustees on income payable to resident beneficiaries or to unborn or unascertained beneficiaries. *Harvard Trust Co. v. Commissioner of Corps & Taxation*, 284 Mass. 224, 187 N.E. 596 (1933). The trustee had been appointed by a Vermont probate court under a stipulation that the trust property would be taxed in Vermont in the same manner as like property held by any Vermont trust company. The trusts assets consisted of securities situated in Massachusetts.

On the other hand, a Massachusetts statute providing that a trustee was exempt from taxes on income payable to or accumulated for nonresidents of Massachusetts was construed to exempt a resident trustee from paying taxes to Massachusetts where the beneficiaries of the trust moved out of the State. *State Tax Com. v. Felt*, 331 Mass. 63, 117 N.E.2d 166 (1954). At the time the trust was created, the settlor and the beneficiaries who were the settlor’s children were residents of Massachusetts, but the settlor divorced, remarried and moved out of the State with her children.

A resident trustee was held liable for taxes on gains or profit which it had received for the benefit of a non-resident beneficiary. *State ex rel. Wisconsin Trust Co. v. Widule*, 164 Wis. 56, 159 N.W. 630 (1916). There were three trustees, the beneficiary and another person, both residents of Pennsylvania, and a Wisconsin trust company. The trustees had been appointed by a Wisconsin probate court in that the settlor had died a resident of Wisconsin. The trust estate consisted largely of securities in the custody of the Wisconsin trustee and dividends were received in the Wisconsin office of the trustee. The Wisconsin statute imposed a tax upon income derived from property located or business transacted within the state. The trust was held taxable even though the majority of the trustees resided out-of-state and the income beneficiary who was also entitled to the principal resided out-of-state.

A trust company situated in Tennessee was held not to be taxable on income from securities held as trustee for the benefit of nonresident beneficiaries. *Bank of Commerce & Trust Co. v. McCabe*, 164 Tenn. 591, 51 S.W.2d 850 (1932). Although the Tennessee statute imposed a tax on the income from stocks or bonds of a trust, it was silent on the taxation of income received by a resident trustee for the benefit of a nonresident beneficiary. The court held that the statute was intended to cover only business trusts and that the legislature did not intend to tax trust income received for the benefit of nonresident beneficiaries.

Nine states (such as California and Arkansas) tax the trust where the sole contact is the residency of the trustee within the state. Indiana departs from the rule where the trust situs is in another state and at least one of two or a majority of the trustees reside out of state.

In Utah, the trust is taxable if the “place of administration” is Utah. If there are two or more trustees, one of whom is a Utah corporate or professional trustee, the place of administration is Utah. If there are two or more fiduciaries, none of whom is a corporate or professional trustee, the law is not clear but Utah will probably be the place of administration only if the major portion of the administration is conducted in Utah.

Although most state statutes taxing on the basis of the presence of a trustee will apportion the income between resident and nonresident trustees (such as California), some states will tax the entire income of the trust where a majority of trustees reside in the state.

4. The Place of Administration.

The administration of the trust within the state is likely sufficient contact with the state to satisfy constitutional requirements. Sufficient nexus has been found involving a resident settlor with trust administration in the taxing state where some of the trust property was within the state. In *Pabst v. Wisconsin Dept. of Taxation*, 19 Wis.2d 32134, 120 N.W.2d 77 (Sup.Ct.Wis., 1963), the court found the nexus was sufficient notwithstanding the fact that the trustee and beneficiaries were nonresidents and that the “business” of the trust was partially conducted in other states. The trustees unsuccessfully argued that because evidences of intangible assets were located outside the state (mobilia sequuntur personam) situs of the assets follows the legal owner — here, the nonresident trustee), the income therefrom should not be subject to tax.

A nonresident trustee was held liable for taxes on the accumulated income of a trust, although the beneficiaries and assets of the trust were all located out-of-state, under a statute taxing trust income where a trust is administered. *Pabst v. Wisconsin Dept. of Taxation*, 19 Wis.2d 313, 120 N.W.2d 77 (1963). The court interpreted the statute to require a finding that the major portion of the trust’s business was conducted in Wisconsin and it did so based on the fact that a Wisconsin resident de facto exercised the responsibility delegated by the trustee for the investment of the trust assets and that the only business office of the trust was in Wisconsin. Further, all records were kept in the State and all trust accounting was done in Wisconsin under the supervision of the Wisconsin resident. The court refused to apply the maxim that the situs of moveables follow the residence of the owner and, instead, applied a business situs exception to the fact situation to support the nexus necessary to tax the income of the trust based on the place of its administration.

A case with similar facts had been earlier decided by Wisconsin to the contrary. In *Wisconsin Dept. of Taxation v. Pabst*, 15 Wis.2d 195, 112 N.W.2d 161 (1961), nonresident trustees were held not taxable on income accumulated for two beneficiaries one of whom was a resident of Wisconsin. The Wisconsin statute required trustees to pay taxes on trust income if the trust was administered within the State. The trust estate consisted solely of intangible personal property including insurance policies which were physically located in Wisconsin together with all the books and records of the trust. All of the trust’s bookkeeping and clerical work was conducted in Wisconsin under the direction of a Wisconsin resident. However, all investment decisions were made by a Massachusetts investment advisor retained by the trustees. The court emphasized that all policy decisions were made by the trustees and characterized the activities in Wisconsin as ministerial even though they included an annual audit and the filing of federal tax returns. The

court applied the maxim that movables follow the person and that the situs of the income from intangible property would be that of the trustees.

A nonresident trustee has been held taxable under a statute taxing trustees on accumulated income where the trust had been created by the will of a resident settlor and the trust was being administered under the jurisdiction of the local probate court. *First Nat. Bank of Boston v. Harvey*, 16 A.2d 184 (Sup.Ct. Vt. 1940). This case is distinguishable from *Swift v. Missouri* in that the ongoing administration of the trust was by the court of the taxing state as opposed to the mere creation of the trust by the probate court and nothing more.

Wisconsin courts have held that the place of administration means more than the continuing jurisdiction of the probate court. In *Bayfield County v. Pishon*, 162 Wis. 466, 156 N.W. 463 (1916) the trustee and income beneficiaries were residents of Maine. The trust assets were in Maine and no income was derived from Wisconsin of any kind. However, the trust was created by the will of a person who had died domiciled in Wisconsin and the trustee was qualified and appointed by the Wisconsin probate court where the trustee rendered annual accountings. The court held that the statute was not capable of the interpretation that the property was constructively in Wisconsin because a Wisconsin court was administering the trust.

While in both of the foregoing cases an additional factor was present, the administration of the trust would likely be sufficient under the principles of *Shaffer, supra*, because the trust would be looking to the state for the “protection” of its laws.

The place of administration constitutes the basis for imposing a tax on the trust in some jurisdictions, for example, Colorado, Kansas, Utah, Virginia and West Virginia.

5. Residency of a Beneficiary

In the majority of states, the mere presence of beneficiaries without more is insufficient nexus to support state taxation of the trust. The beneficiary can be taxed on the income received from the trust even if that income was previously subject to tax by another state which did have sufficient nexus with the trust to tax its income. *Maguire v. Tefery*, 253 U.S. 12 (1938); *Guaranty Trust Co. v. Virginia*, 305 U.S. 19 (1938).

A New York case involved a deceased settlor who had been a resident of New York, but at the time the New York income tax was imposed the trust had a foreign situs, nonresident trustees, and both the assets and the place of administration of the trust were outside of New York. There was a resident income beneficiary, but the trustee had power to accumulate the income and upon the beneficiary's death, to distribute the assets to the settlor's descendants. It was held unconstitutional to tax the trust on the accumulated, undistributed income of the trust. *Mercantile Safe Deposit & Trust Co. V. Murphy*, 242 N.Y.S.2d 26 (N.Y. App.Div., (1963), aff'd 255 N.Y.S.2d 96; 203 N.E.2d 490 (1964).

In *McCulloch v. Franchise Tax Bd.*, 61 Cal.2d 186 (1964) (rehearing denied 379 U.S. 984 984 (1965), the State of California successfully taxed the income of a nonresident trust accumulated for eventual distribution to a resident beneficiary. Although the Court clearly held that the residency of the beneficiary was sufficient nexus, *McCulloch* is distinguishable in that the beneficiary was also one of three trustees and had actually ultimately received the income in California, The tax was only on the portion of the trust income due the resident beneficiary and not on the whole income of the trust.

Eight states impose an income tax on a trust where the only contact with the state is that one or more beneficiaries reside in the state.

In California, if there are multiple trustees or multiple beneficiaries, some of whom are California residents, the taxable income is apportioned, first according to the trustees who are residents, and then according to the resident beneficiaries. If a California tax is not imposed because the beneficiary's interest is contingent, the beneficiary will be taxed when the income is distributed or distributable to the beneficiary.

Georgia imposes an income tax on trusts with beneficiaries residing in Georgia. There is no case law or Attorney General Opinions interpreting the relevant statute. Although the statute itself provides no formula for apportionment between resident and nonresident beneficiaries, the statute provides that income received by a resident fiduciary shall not be subject to tax when the income is accumulated for, is distributed, or becomes distributable during the taxable year to a nonresident of Georgia and the income was received from business done outside Georgia or from property held outside of Georgia. O.C.G.A. §48-7-22(a)(3)(A). This statutory exception appears to provide the basis for apportioning certain income between resident and nonresident beneficiaries.

New Hampshire will impose a tax on a trust to the extent that the persons to whom the income from the trust is payable or for whose benefit it is accumulated are residents of the state, but only where a trustee is resident in the state or derived his appointment from a court in the state.

1. Governing Law.

No state will impose an income tax on a trust on the sole basis that the governing law of the state is designated as the law applicable to the trust in the trust instrument.

D. Computation Of State Income Tax

1. Starting Amount.

Most state income taxes start the tax computation with a certain amount shown on the trust's federal income tax return for the period involved. This "starting amount" (before state law adjustments and modifications) is typically the trust's federally reported:

- _____ Taxable income ["TI"],
 - _____ Adjusted gross income ["AGI"],
 - _____ Net income ["NI"] (i.e. state defined items of federally reported gross income less state defined items of federally reported deduction),
- or
- _____ Gross income ["GI"] (i.e. state defined items of federally reported gross income).

2. Distribution Deduction.

Most every state which imposes an income tax and the District of Columbia allows the trust a deduction for distributions along the federal pattern.

Although Montana allows a distribution deduction, it does not use the concept of "distributable net income" to either limit the deduction or to preserve the character of income or expense.

3. Interstate Credits.

Most states allow some form of credit against the income tax imposed on trusts to the extent other states impose an income tax on the same income. However, there are marked difference in the form and extent of the credit allowed by the states. See, Appendix B.

All of the states that provide a credit allow a credit to their residents for income taxes paid to other states. This follows because the state will tax all of the income of the resident trust even though some of the income might have its source in another state. In most all instances, the credit to the resident trust is limited to taxes imposed pursuant to the other state's power to tax nonresidents. A minority of the states allow a credit to nonresident trusts for taxes imposed on local source income that is also taxed by the trust's "state of residence."

Some state such as Mississippi and Tennessee do not allow any credit for taxes paid to other states.

As a rule, credits are allowed to resident trusts regardless of reciprocity in the other taxing states. However, all states that allow a credit to nonresident trusts appear to condition the allowance of the credit on the grant of a corresponding reciprocal nonresident credit in the other states. See, for example, Arizona, California and Michigan.

When a resident trust is entitled to a credit for taxes on income which is also taxed in a state which allows a credit to nonresident trusts, the trust may end up with two credits and avoid taxes in both states. Accordingly, states that allow credits have express provisions to avoid the circuitry of credits by denying credits to resident trust which are entitled to nonresident credits under the laws of the nonresident taxing state. See, for example, Hawaii, Montana, Virginia and West Virginia.

Further, states which allow credits have enacted provisions to make sure that the taxpayer does not enjoy any advantage from the allowance which was not intended. These provisions restrict the credit to the amount of tax which would have been due on the subject income if taxed at the rates which obtain in the resident state (such as Alabama and Arkansas), limit the credit to the same proportion which the out-of-state income bears to the trust's total income (such as Colorado, Delaware, Idaho, New Mexico, North Carolina and Rhode Island) or limit the credit to an amount which is no larger that the amount which the trust would have saved if the income had not been taxed at all by the resident state (such as Kentucky, Maryland and Minnesota).

CHARTS — STATE BY STATE

<p style="margin: 0;">State Taxation On Income Of Trusts With Multi-State Contacts</p>	<p style="margin: 0;">A L A B A M A</p> <p style="margin: 0;">Income Tax</p>	<p style="margin: 0;">A L A S K A</p> <p style="margin: 0;">Has No Income Tax</p>	<p style="margin: 0;">A R I Z O N A</p> <p style="margin: 0;">Income Tax</p>	<p style="margin: 0;">A R K A N S A S</p> <p style="margin: 0;">Income Tax</p>
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	No ¹		Yes	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is—				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes		Yes	Yes ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	Yes ²		No ³	Yes ²
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No ² N/A ²		Yes Pro Rata	Yes ^{2,3} Pro Rata ⁴
4. Trust is being "administered in" this state?	No ²		Yes	Yes ⁵
5. Residency of a trust beneficiary ("B") in this state?	No ³		Yes	No
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	No ³		Yes	"
2) Undistributed ordinary income (where income distributions are discretionary)?	No ³		Yes	"
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	No ³		Yes	"
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	No ³		Yes	"
2) Undistributed ordinary income?	No ³		Yes	"
d) If B is only a permissible distributee (as to both income and principal) of a totally discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	No ³		Yes	"
2) Undistributed ordinary income?	No ³		Yes	"
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	No ³		Yes	"
2) A specific percentage of principal per year (a unitrust)?	No ³		Yes	"
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	No ³		Yes	"
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No ²		No	No
2. Equally apply to all—				
a) Ordinary income items?	Yes ²		Yes	Yes ⁶
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes ²		Yes	Yes ⁶
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes ⁴		Yes ¹	Yes ⁷
E. Does this state allow a distribution deduction?	Yes ³		Yes	Yes ⁸
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	Other		TI	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% – ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	2%-5%		2.87%-5.04%	1%-7%
2. Net capital gains?	Same		Same	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	Yes ⁵		Yes ²	No
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No		No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	C A L I F O R N I A	C O L O R A D O	C O N N E C T I C U T	D E L A W A R E
	Income Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes	Yes	Yes	No ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No	No	Yes ¹	No ¹
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	Yes ¹ Pro Rata	No ¹ All ¹	No N/A	No ¹ N/A ¹
4. Trust is being "administered in" this state?	Yes ²	Yes ¹	No ¹	No
5. Residency of a trust beneficiary ("B") in this state?	Yes ¹	No	No	No ²
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	No	"	"	No ²
2) Undistributed ordinary income (where income distributions are discretionary)?	No	"	"	No ²
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	No	"	"	No ²
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	No	"	"	No ²
2) Undistributed ordinary income?	No	"	"	No ²
d) If B is only a permissible distributee (as to both income and principal) of a totally discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	No	"	"	No ²
2) Undistributed ordinary income?	No	"	"	No ²
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	No	"	"	No ²
2) A specific percentage of principal per year (a unitrust)?	No	"	"	No ²
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	Yes ¹	"	"	No ²
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No	No	No
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes	Yes	Yes ¹
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes	Yes	Yes ¹
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	No	Yes ²	Yes ²	Yes ²
E. Does this state allow a distribution deduction?	Yes	Yes	Yes	Yes ³
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI	TI	TI	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	1%-9.3%	4.63%	4.5%	2.2%-5.95%
2. Net capital gains?	Same	Same	Same	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	No	Yes ³	Yes ^{3,4}	Yes ³
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No	No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

D I S T R I B U T I O N O F I N C O M E T A X	C O N T R I B U T I O N O F I N C O M E T A X	F L O R I D A	F L O R I D A	G E O R G I A
Income Tax	Has No Income Tax	Intangibles Tax ¹	Intangibles Tax ¹	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).		See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.		
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes			Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is—				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	No ¹		No	Yes
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	Yes ²		No	No
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No N/A		Yes ¹ All	No N/A
4. Trust is being "administered in" this state?	No		Yes ¹	Yes ¹
5. Residency of a trust beneficiary ("B") in this state?	No		No	Yes ¹
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	"		"	No ²
2) Undistributed ordinary income (where income distributions are discretionary)?	"		"	Yes ³
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"		"	Yes ⁴
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"		"	Yes ⁵
2) Undistributed ordinary income?	"		"	Yes ⁶
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"		"	Yes ⁷
2) Undistributed ordinary income?	"		"	Yes ⁷
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"		"	Yes ⁸
2) A specific percentage of principal per year (a unitrust)?	"		"	Yes ⁸
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"		"	No ⁹
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No		—	No
2. Equally apply to all—				
a) Ordinary income items?	Yes		—	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes		—	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes ³		—	Yes ¹⁰
E. Does this state allow a distribution deduction?	Yes		—	Yes
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	Other ⁴		Other	AGI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% – ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	5%-9.3%		0.001%	1%-6%
2. Net capital gains?	Same		N/A	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	Yes ⁶		No	Yes ¹¹
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No		No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	Yes	Yes	Yes

State Taxation On Income Of Trusts With Multi-State Contacts

	H A W A I I	I D A H O	I L L I N O I S	I N D I A N A
	Income Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹	Yes	Yes	Yes ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No	No	Yes ¹	No
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	Yes ² All ³	No N/A	No N/A	Yes ² Pro Rata
4. Trust is being "administered in" this state?	Yes ²	Yes	No	Yes
5. Residency of a trust beneficiary ("B") in this state?	No	Yes	No	No
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	Yes	"	"
2) Undistributed ordinary income (where income distributions are discretionary)?	"	Yes	"	"
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	Yes	"	"
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	Yes	"	"
2) Undistributed ordinary income?	"	Yes	"	"
d) If B is only a permissible distributee (as to both income and principal) of a totally discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	Yes	"	"
2) Undistributed ordinary income?	"	Yes	"	"
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"	Yes	"	"
2) A specific percentage of principal per year (a unitrust)?	"	Yes	"	"
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	Yes	"	"
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No	No	No
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes	Yes	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes	Yes	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes	Yes ¹	No	Yes ³
E. Does this state allow a distribution deduction?	Yes	Yes	Yes	Yes
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI	TI	TI	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	1.6%-8.75%	1.6%-7.8%	4.5% ³	3.4%
2. Net capital gains?	1.6%-7.25%	Same	Same ³	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	Yes ¹	Yes ²	No	No
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	Yes ⁴	No	No	Yes ⁴
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	I O W A	K A N S A S	K E N T U C K Y	L O U I S I A N A
	Income Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes	Yes	Yes ¹	Yes
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No	No	No	Yes ¹
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No ^{1,2}	No ¹	No	No ¹
4. Trust is being "administered in" this state?	All ³	N/A	N/A	N/A
5. Residency of a trust beneficiary ("B") in this state?	No ^{1,2}	Yes	No	Yes ¹
a) If only income is distributable to B, does this state tax—	No	No	Yes ²	No
1) Taxable receipts that are allocated to principal?	"	"	Yes ²	"
2) Undistributed ordinary income (where income distributions are discretionary)?	"	"	Yes ²	"
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	"	Yes ²	"
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—	"	"	No ²	"
1) Taxable receipts that are allocated to principal?	"	"	No ²	"
2) Undistributed ordinary income?	"	"	Yes ²	"
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—	"	"	Yes ²	"
1) Taxable receipts that are allocated to principal?	"	"	Yes ²	"
2) Undistributed ordinary income?	"	"	Yes ^{2,4}	"
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—	"	"	Maybe ⁴	"
1) A specific amount from the trust per year (an annuity trust)?	"	"	Yes ^{2,4}	"
2) A specific percentage of principal per year (a unitrust)?	"	"	Maybe ⁴	"
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	"	No ²	"
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No	No ²	No ¹
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes ²	Yes	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes ²	Yes	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes ⁴	Yes ³	Yes ³	Yes ²
E. Does this state allow a distribution deduction?	Yes	Yes ⁴	Yes	Yes
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	AGI	TI	AGI	AGI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	.36%-8.98%	3.5%-6.45%	2%-6%	2%-6%
2. Net capital gains?	Same	Same	Same	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	No	No	No	No
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No	No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	Yes ⁵	Yes ⁵	No

State Taxation On Income Of Trusts With Multi-State Contacts

	M A I N E	M A R Y L A N D	M A S S A C H U S E T T S	M I C H I G A N
	Income Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes ¹	Yes ¹
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹	Yes ¹	Yes ^{2,3}	Yes ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	Yes ²	Yes	No ³	No ^{2,3}
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No ³	No	No ⁴	No ^{2,3}
4. Trust is being "administered in" this state?	N/A	N/A	N/A	N/A
5. Residency of a trust beneficiary ("B") in this state?	No ³	Yes ³	No	No ^{2,3}
a) If only income is distributable to B, does this state tax—	No	No	No	No ^{2,3}
1) Taxable receipts that are allocated to principal?	"	"	"	No ^{2,3}
2) Undistributed ordinary income (where income distributions are discretionary)?	"	"	"	No ^{2,3}
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	"	"	No ^{2,3}
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	No ^{2,3}
2) Undistributed ordinary income?	"	"	"	No ^{2,3}
d) If B is only a permissible distributee (as to both income and principal) of a totally discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	No ^{2,3}
2) Undistributed ordinary income?	"	"	"	No ^{2,3}
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"	"	"	No ^{2,3}
2) A specific percentage of principal per year (a unitrust)?	"	"	"	No ^{2,3}
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	"	"	No ^{2,3}
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No	No	No
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes	Yes	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes	Yes	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes	No	Yes	No
E. Does this state allow a distribution deduction?	Yes	Yes	No	Yes
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI	TI ⁴	Other	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	2%-8.5%	2%-4.85%	5.6%	4.2%
2. Net capital gains?	Same	Same	0%-12%	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	Yes ¹	Yes ⁵	No	No
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No	No	"Single" business tax ⁴
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	M I C H I G A N	M I N N E S O T A	M I S S I S S I P P I	M I S S O U R I
	Intangibles Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Repealed as of 1/1/98	Yes ¹	Yes	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?		Yes ²	Yes ¹	Yes ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?		Yes ³	No ²	Yes ²
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?		No N/A	Yes ² Unclear	No N/A
4. Trust is being "administered in" this state?		No ³	Yes	No
5. Residency of a trust beneficiary ("B") in this state?		No	No	No
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?		"	"	"
2) Undistributed ordinary income (where income distributions are discretionary)?		"	"	"
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?		"	"	"
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?		"	"	"
2) Undistributed ordinary income?		"	"	"
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?		"	"	"
2) Undistributed ordinary income?		"	"	"
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?		"	"	"
2) A specific percentage of principal per year (a unitrust)?		"	"	"
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?		"	"	"
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?		No	No	No
2. Equally apply to all—				
a) Ordinary income items?		Yes	Yes	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?		Yes	Yes	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?		Yes	Yes	Yes ²
E. Does this state allow a distribution deduction?		Yes	Yes ³	Yes ⁴
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix		TI	Other	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?		5.35%-7.85%	3%-5%	1.55%-6%
2. Net capital gains?		Same	Same	Same
H. Have the foregoing questions missed any significant point regarding this state tax?		Yes ⁴	No	No
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?		No	No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	M O N T A N A	N E B R A S K A	N E V A D A	N E W H A M P S H I R E
	Income Tax	Income Tax	Has No Income Tax	Has No Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes ¹	Yes		
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹	Yes ¹		
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No	Yes ²		
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No N/A	No N/A		
4. Trust is being "administered in" this state?	No	No		
5. Residency of a trust beneficiary ("B") in this state?	No	No		
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"		
2) Undistributed ordinary income (where income distributions are discretionary)?	"	"		
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	"		
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"		
2) Undistributed ordinary income?	"	"		
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"		
2) Undistributed ordinary income?	"	"		
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"	"		
2) A specific percentage of principal per year (a unitrust)?	"	"		
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	"		
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No		
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes		
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes		
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes	Yes ³		
E. Does this state allow a distribution deduction?	Yes ²	Yes		
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	Other	TI		
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	2%-11%	2.51%-6.68%		
2. Net capital gains?	Same	Same		
H. Have the foregoing questions missed any significant point regarding this state tax?	No	Yes ⁴		
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No		
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	Yes

State Taxation On Income Of Trusts With Multi-State Contacts

	N E W H A M P S H I R E	N E W J E R S E Y	N E W M E X I C O	N E W Y O R K
	Intangibles Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	No ¹	Yes ¹	Yes ¹	Yes ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No ¹	Yes ²	No	Yes ²
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No ¹ All ¹	No ² N/A ²	Yes ² Pro Rata ³	No N/A
4. Trust is being "administered in" this state?	No ¹	No ²	Yes ⁴	No
5. Residency of a trust beneficiary ("B") in this state?	Yes ²	No ²	No	No ³
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	No ³	No ²	"	No ³
2) Undistributed ordinary income (where income distributions are discretionary)?	Yes ³	No ²	"	No ³
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	Yes ³	No ²	"	No ³
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	Yes ³	No ²	"	No ³
2) Undistributed ordinary income?	Yes ³	No ²	"	No ³
d) If B is only a permissible distributee (as to both income and principal) of a totally discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	Yes ³	No ²	"	No ³
2) Undistributed ordinary income?	Yes ³	No ²	"	No ³
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	No ³	No ²	"	No ³
2) A specific percentage of principal per year (a unitrust)?	No ³	No ²	"	No ³
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	No ³	No ²	"	No ³
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No ¹	No	No	No
2. Equally apply to all—				
a) Ordinary income items?	No ⁴	Yes	Yes	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	No ³	Yes	Yes	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes ⁴	Yes ³	Yes ⁴	Yes ⁴
E. Does this state allow a distribution deduction?	No	Yes ⁴	Yes ⁵	Yes
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	Other	Other ⁴	TI	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	See Appendix B	1.4%-6.370% Same	1.79%-8.2% Same	4.00%-6.85% 4.00%-6.85%
2. Net capital gains?				
H. Have the foregoing questions missed any significant point regarding this state tax?	No	Yes ⁵	No	No ⁵
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	Yes ⁵	No	No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	N O R T H C A R O L I N A Income Tax	N O R T H C A R O L I N A Intangibles Tax	N O R T H D A K O T A Income Tax	O H I O No Income Tax on Trusts
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Repealed as of 1/1/95	Yes	
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹		Yes ¹	
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No		Yes	
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No No N/A		No No N/A	
4. Trust is being "administered in" this state?	No		No	
5. Residency of a trust beneficiary ("B") in this state?	Yes		No	
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	No		"	
2) Undistributed ordinary income (where income distributions are discretionary)?	Yes		"	
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	Yes		"	
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	Yes		"	
2) Undistributed ordinary income?	Yes		"	
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	No		"	
2) Undistributed ordinary income?	No		"	
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	Yes		"	
2) A specific percentage of principal per year (a unitrust)?	Yes		"	
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	Yes		"	
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No		No	
2. Equally apply to all—				
a) Ordinary income items?	Yes		Yes	
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes		Yes	
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	No		Yes ²	
E. Does this state allow a distribution deduction?	Yes		Yes ³	
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI		TI	
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	6%-7.75%		2.67%-12%	
2. Net capital gains?	Same		Same	
H. Have the foregoing questions missed any significant point regarding this state tax?	No		No	
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No		No	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	O K L A H O M A	O R E G O N	P E N N S Y L V A N I A	R H O D E I S L A N D
	Income Tax	Income Tax	Income Tax	Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes/No ¹	Yes
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹	Yes	Yes	Yes ¹
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	Yes ²	No	Yes	No
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No	Yes	No	No ²
4. Trust is being "administered in" this state?	N/A	Unclear	N/A	N/A
5. Residency of a trust beneficiary ("B") in this state?	No	Yes	No	No ²
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	No	No	No	No ²
2) Undistributed ordinary income (where income distributions are discretionary)?	"	"	"	No ²
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	"	"	No ²
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	No ²
2) Undistributed ordinary income?	"	"	"	No ²
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	No ²
2) Undistributed ordinary income?	"	"	"	No ²
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"	"	"	No ²
2) A specific percentage of principal per year (a unitrust)?	"	"	"	No ²
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	"	"	No ²
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No	No	No
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes	Yes	Yes
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes	Yes	Yes
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes	Yes	Yes ³	Yes ³
E. Does this state allow a distribution deduction?	Yes	Yes	Yes	Yes ⁴
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI	TI	Other ³	TI
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	0.5%-7%	5%-9%	2.8%	25.5% of federal income tax liability
2. Net capital gains?	Same	Same	Same	Same
H. Have the foregoing questions missed any significant point regarding this state tax?	Yes ³	No	No	No
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No	No ⁴	No
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	S O U T H C A R O L I N A Income Tax	S O U T H D A K O T A Has No Income Tax	T E N N E S S E Income Tax	T E X A S Has No Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes		Yes ¹	
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes		No	
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	No		No	
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No No N/A		No No N/A	
4. Trust is being "administered in" this state?	Yes		No	
5. Residency of a trust beneficiary ("B") in this state?	No		Yes	
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	"		Yes ²	
2) Undistributed ordinary income (where income distributions are discretionary)?	"		Yes ²	
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"		Yes ²	
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"		No ²	
2) Undistributed ordinary income?	"		No ²	
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"		Yes ²	
2) Undistributed ordinary income?	"		Yes ²	
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"		Yes ²	
2) A specific percentage of principal per year (a unitrust)?	"		Yes ²	
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"		No ²	
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No		No	
2. Equally apply to all—				
a) Ordinary income items?	Yes		Yes	
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes		Yes	
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes ³		No	
E. Does this state allow a distribution deduction?	Yes		No ³	
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI		Other	
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	2.5%-7%		6%	
2. Net capital gains?	Same ⁴		None	
H. Have the foregoing questions missed any significant point regarding this state tax?	No		No	
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No		No	
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	U T A H	V E R M O N T	V I R G I N I A	W A S H I N G T O N
	Income Tax	Income Tax	Income Tax	Has No Income Tax
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes	Yes	
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹	Yes	Yes ¹	
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	Sometimes ²	Yes ²	Yes ²	
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	Yes ³ All or None ³	No N/A	Yes ² All ²	
4. Trust is being "administered in" this state?	Yes ³	No	Yes ²	
5. Residency of a trust beneficiary ("B") in this state?	No	No	No	
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	
2) Undistributed ordinary income (where income distributions are discretionary)?	"	"	"	
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	"	"	
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	
2) Undistributed ordinary income?	"	"	"	
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"	"	
2) Undistributed ordinary income?	"	"	"	
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"	"	"	
2) A specific percentage of principal per year (a unitrust)?	"	"	"	
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	"	"	
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No	No	
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes	Yes	
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes	Yes	
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes	Yes	Yes ³	
E. Does this state allow a distribution deduction?	Yes	Yes	Yes	
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI	TI	TI	
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	2.55%-7%	24% of federal income tax liability	2%-5.75%	
2. Net capital gains?	Same	Same	Same	
H. Have the foregoing questions missed any significant point regarding this state tax?	Yes ⁴	No	No	
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No	No	
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	No

State Taxation On Income Of Trusts With Multi-State Contacts

	W E S T V I R G I N I A Income Tax	W I S C O N S I N Income Tax	W Y O M I N G Has No Income Tax	
See Appendix paragraphs B and C for a summary of the method by which the state tax is computed, and for additional comments on the state's applicable tax rate(s).	See Appendix for names of contributing state reporters and paragraph A of the Appendix for all chart footnotes.			
A. If a trust is revocable [or if, for other reasons, the trust's settlor or an IRC §678(a) beneficiary is treated as "owner" of the trust for federal income tax purposes], does this state follow the federal approach to taxation of the trust's items of income, deduction, etc.? If "no", see FN explanation.	Yes	Yes ¹		
B. As to all other noncharitable trusts, is tax imposed on the trust if the ONLY contact with this state is —				
1. The trust has a "source of income" in this state (the tax applying only to income from that source)?	Yes ¹	Yes ^{2,5}		
2. Residency of the settlor/testator in this state at the time the trust was created (i.e., in the case of what had been a revocable trust, at the time it became irrevocable)?	Yes ²	No/Yes ³		
3. Residency of the trustee or one of the trustees in this state? If any trustee is outside the state, is tax on all or only a pro rata portion?	No N/A	No/Yes ³ N/A-All		
4. Trust is being "administered in" this state?	No	No/Yes ³		
5. Residency of a trust beneficiary ("B") in this state?	No	No		
a) If only income is distributable to B, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"		
2) Undistributed ordinary income (where income distributions are discretionary)?	"	"		
b) If, in addition to income, B is to receive principal only at a stated age, does this state tax taxable receipts that are allocated to principal?	"	"		
c) If B is only a contingent (on surviving an event) remainderman, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"		
2) Undistributed ordinary income?	"	"		
d) If B is only a permissible distributee (as to both income and principal) of a total-ly discretionary trust, does this state tax—				
1) Taxable receipts that are allocated to principal?	"	"		
2) Undistributed ordinary income?	"	"		
e) Does this state tax taxable receipts that are allocated to principal if B is only entitled to receive—				
1) A specific amount from the trust per year (an annuity trust)?	"	"		
2) A specific percentage of principal per year (a unitrust)?	"	"		
f) Do the above answers depend on whether B's interest is vested, vested subject to divestment, contingent, etc.?	"	"		
C. Do the above answers (in paragraphs A and B)—				
1. Apply only to testamentary trusts?	No	No ^{3,4}		
2. Equally apply to all—				
a) Ordinary income items?	Yes	Yes		
b) Taxable receipts that are ordinarily allocated to principal (such as capital gains)?	Yes	Yes		
D. Is there any other situation where a tax return is to be filed for this state even though no tax is due (other than because the net taxable amount is too low)?	Yes ³	Yes ⁵		
E. Does this state allow a distribution deduction?	Yes ⁴	Yes		
F. What is the starting amount for this state tax (more fully explained in paragraph B of the Appendix)? TI — Federal taxable income NI — Federal net income AGI — Federal adjusted gross income Other — As explained in paragraph B of the Appendix	TI	TI		
G. As further described in paragraph C of the Appendix, the range of this state's tax rates for this tax [i.e., the lowest bracket/highest bracket (___% - ___%) or a flat rate (___%)] on—				
1. Net ordinary income?	3%-6.5%	4.6%-6.75%		
2. Net capital gains?	Same	40% of above rate		
H. Have the foregoing questions missed any significant point regarding this state tax?	No	Yes ⁶		
I. Is there any other state tax on income of any kind that might apply to a trust having any of the above contacts with the state?	No	No		
J. Is there any state tax on the assessed value of intangibles owned by a trust having any of the above contacts with the state?	No	No	No	

APPENDIX — STATE BY STATE

ALABAMA Income Tax

Brian T. Williams, Birmingham

March 23, 2001

A. Numbered footnotes from chart —

1. A grantor is not taxed on the income of a trust unless the trust is revocable. Al. Dept. of Rev. Regs. §810-3-25-.05(8). The grantor trust rules in the Internal Revenue Code are not recognized under Alabama law. *State of Alabama vs. Montgomery* 1986 WL 28948 (Ala. Dept. Rev.). See also Joseph W. Blackburn, “Unique Alabama Trust and Estate Income Tax Rules Create Traps for Alabama Lawyers” Vol. 60 No. 5, *Alabama Lawyer*, 249-251. (July 1999)
2. Income tax is imposed on taxable income (as defined) of every estate and trust resident in the State of Alabama. Ala. Code §40-18-2(5) (1975). In the case of a trust created by a non-resident, the gross income of such trust includes only amounts which would be included in the gross income of a non-resident individual. Ala. Code §40-18-25(c) (1975). The implication is that a trust created by a resident or the estate of a resident is considered to be a trust “resident” in the State. If a trust is a “resident,” all revenues, receipts and income of the trust is taxed to the trust, with certain deductions and credits allowed by law. The gross income of a “non-resident” trust includes only amounts which would be included in the gross income of a non-resident individual (*i.e.*, gross income from real and or tangible personal property located within the state, or intangible personal property with a business situs in the state). Ala. Dept. of Rev. Reg. §810-3-14-05, Rev. Rul. 97-007 (Ala. Dept. Rev. July 11, 1997). To date, Alabama’s apparent position that it can tax a trust if the sole contact with Alabama is that the settler/testator was a resident of Alabama at the time the trust was created has not been tested; however, see *Chase Manhattan Bank v. Gavin* 249 Conn. 172, 733 A.2d 782 (1999), *cert. denied*, 528 U. S. 965 (1999). It has been held that the actual presence of the trustee in Alabama is irrelevant (as to “resident” status of trust and the situs of intangible assets owned by the trustee). *State of Alabama v. Parker* 1986 WL 28934 (Ala. Dept. Rev.)
3. A beneficiary of a resident or non-resident trust is taxable on the distributive share of the net income of the trust or estate. Ala. Code §40-18-25(d) (1975). In this respect, note that Alabama’s income taxation of trusts and beneficiaries is based on 1935 Federal Statutes and related precedent. *Estate of Walton v. State Dept. Rev.*, 579 So.2d 643 (Ala. Civ. App. 1991). In general, a deduction to the trust and an inclusion in the beneficiary’s income occurs only if the distribution is payable directly from and traceable to fiduciary accounting income. If a distribution is due to be paid irrespective of the adequacy of income, then the distribution is deemed to be from principal. See Joseph W. Blackburn, “Unique Alabama Trust and Estate Income Tax Rules Create Traps for Alabama Lawyers” Vol. 60 No. 5, *Alabama Lawyer*, 249-251, (July 1999)
4. If any beneficiary is a nonresident taxpayer (Ala. Code of 1975 §40-18-29) or a resident. Rev. Rul. 97-007 (Ala. Dept. Rev. July 11, 1997).
5. See Footnotes 1, 2 and 3. There is currently a proposal to conform Alabama law to Subchapter J of the Internal Revenue Code.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Gross income (as defined in the state income tax law). Ala. Code §§40-18-25 and 40-18-14 et seq.
2. Principal adjustments to starting amount (for a typical trust) that:
 - a) Increase the taxable amount: None
 - b) Decrease the taxable amount: Allowable deductions, including all federal, state (including Alabama), and local (within Alabama) taxes.
3. Credits allowed (to a typical trust):
 - a) Taxes imposed on the trust by other states:
Credit will be allowed to residents for taxes paid to another state on income derived from sources within that state but not greater than that which would be due to Alabama if computed at the Alabama rate (Ala. Code of 1975 §40-18-21).
 - b) Other activities of the trust:
None

C. Rate for this tax as it applies to the net taxable amount of a trust —

Taxable Amount	Tax on Left Column	Tax Rate on Excess
-0-	-0-	2%
500	10	4%
3,000	110	5%

ALASKA Income Tax
Trigg T. Davis, Anchorage
February 15, 2001

Alaska has no individual or trust income (or similar) tax.

ARIZONA Income Tax
Thomas J. Shumard, Phoenix
February 28, 2001

A. Numbered footnotes from chart —

1. If gross income exceeds \$5,000, regardless of taxable income.
2. If you require certification from Department of Revenue for approval of probate court accounting.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI).
2. Principal adjustments to starting amount (for a typical trust) that:
 - a) Increase the taxable amount:
 - Federal Distribution to Beneficiaries;
 - Federal Estate Tax Deduction
 - Federal Fiduciary Exemption
 - Arizona Income from Other Fiduciaries
 - State or Municipal Bond Interest
 - Numerous adjustments under ARS §43-1021
 - b) Decrease the taxable amount:
 - Interest Received on U.S. Obligations
 - Arizona Estate Tax Deduction
 - Distribution to Beneficiaries Determined Under Arizona Law
 - Numerous other adjustments under ARS §43-1022
3. Estate-residence of decedent causes all income to be taxable.

ARKANSAS Income Tax
Robert H. Holmes, Little Rock
February 23, 2001

A. Numbered footnotes from chart —

1. Arkansas imposes an income tax on income from Arkansas lands or interests in land, including gains from sales, Arkansas tangible personal property, including gains from sales, and from unincorporated Arkansas-domiciled businesses (Ark. Code §§26-51-201(b) and (c), 26-51-202(a) and (d)).
2. The basic rule in Arkansas is that trusts created by residents, regardless of other factors, and trusts having a trustee resident in Arkansas, even though the trust was created by a nonresident, are taxable with respect to net income which has not been distributed or become distributable to beneficiaries during the year. Subject to that basic concept, trusts created by nonresidents are exempt from Arkansas income tax (Ark. Code §26-51-201). By inference, trusts created by residents are taxable — a position confirmed by letter opinion of the Revenue Legal Counsel for the Arkansas Department of Finance and Administration to the Reporter.
3. A trust with a trustee resident in Arkansas is taxable on all of the net income of the trust. (Ark. Code §26-51-203).
4. Where the basis for Arkansas taxation of a trust is residence in Arkansas of at least one trustee (meaning that the trust was not created by an Arkansas resident), in the case of joint trustees, some of whom are nonresidents, income is taxed as if each fiduciary has received an equal share.
5. If a trust is being administered in the state, the trustee (whether or not residing in the state) will be treated as an Arkansas resident for this purpose.
6. No distinction is made between the treatment of ordinary income and capital gains, both being fully taxable. Arkansas has adopted the federal method of computing capital gains and losses and allows a 30% capital gains deduction. (Ark. Code Ann. §26-51-815(a) and (b)).
7. The General Instructions for the Arkansas fiduciary income tax returns require the filing of an Arkansas fiduciary return, regardless of whether otherwise required, if any beneficiary of the trust is a nonresident. Based on a Letter Response from Revenue Legal Counsel for the Arkansas Department of Finance and Administration to the Reporter, this requirement is imposed because it is possible that a nonresident beneficiary could owe income tax to Arkansas even though the trust does not.

8. A trust subject to Arkansas income tax is permitted a deduction for amounts distributed or distributable to beneficiaries during the trust income year (Ark. Code §26-51-203). A pass-through is permitted to beneficiaries of any accumulated excess losses existing at the termination of the trust (Ark. Code §26-51-406(c)).

B. Summary description of tax computation components —

1. Starting amount (from chart, Line F): Federal taxable income for Form 1041 (TI), as adjusted. The principal adjustment is to adjust net capital gains (net long term capital gains less net short term capital losses) reported on Schedule D, Form 1041 to 70% as a taxable amount [effective 30% deduction]. Also, no deductions are recognized for the Federal estate tax deduction or Federal fiduciary return exemption.
2. Trusts created by residents and trusts with at least one resident trustee pay the Arkansas income tax on their entire net taxable income (or if a joint trustee is not a resident, on the resident trustee(s)' equal share of net taxable income). (Ark. Code Ann. §26-51-201). These trusts are allowed a deduction, in determining net taxable income, for income distributed or distributable to beneficiaries. (Ark. Code Ann. §26-51-203). Nonresident trusts pay tax on Arkansas source income, including income from Arkansas real property, tangible personal property located in the state, and unincorporated businesses domiciled in Arkansas.
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for the income tax owed to another state or territory on out of state source income, not to exceed what the tax would be on such out of state source income if added to the Arkansas income and calculated at Arkansas income tax rates. (Ark. Code Ann. §26-51-504). Trusts taxable by Arkansas are also allowed a \$20 "personal tax credit" meaning only taxable income of such trust exceeding \$2,000 annually is taxed. (Ark. Code §26-51-501(a)(4)).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates under Regular Tax Table 2 range from 1% on income up to \$3,100 to 7% on income over \$25,900, brackets adjusted for annual COLA increases. (Ark. Code Ann. §26-51-201(d)).

CALIFORNIA Income Tax

Richard S. Kinyon, San Francisco

February 28, 2001

A. Numbered footnotes from chart —

1. IRC §§641-683 are incorporated by reference into California law, with certain specific exceptions contained in California Revenue and Taxation Code §§17731-17779 and the regulations thereunder and with certain modifications applicable to the personal income tax law. California will tax all trust income, regardless of its source, if either all trustees are California residents or all beneficiaries (other than those whose interests are contingent) are California residents. A contingent interest is one which is subject to a condition precedent. If there is no California resident noncontingent beneficiary but there are multiple trustees, some (but not all) of whom are California residents, the taxable income is apportioned according to those trustees who are residents. Likewise, if there is no California resident trustee but there are multiple noncontingent beneficiaries, some (but not all) of whom are California residents, the taxable income is apportioned according to those beneficiaries who are residents. If there are multiple trustees, some (but not all) of whom are California residents, and multiple noncontingent beneficiaries, some (but not all) of whom are California residents, the taxable income is apportioned, first according to the trustees who are residents, and then according to the resident beneficiaries. If a California tax is not imposed because there is no California resident trustee or noncontingent beneficiary but there is a California resident beneficiary whose interest is contingent, the beneficiary will be taxed when the income is distributed or distributable to the beneficiary. In the case of a nonresident beneficiary, trust income is taxable only to him or her to the extent it is derived from sources within California. (Rev. and Tax. Code §§17734, 17742-17745.)
2. If a trust is being administered in the state, the trustee (whether or not residing in the state) will be treated as a California resident for this purpose.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. The taxation of a trust resident in California is determined in accordance with the provisions of Sections 641-683 of the Internal Revenue Code with certain modifications (Rev. and Tax. Code §§17731-17779). Gross income, adjusted gross income, taxable income, etc. for California purposes are all as defined in the Internal Revenue Code with certain modifications (Rev. and Tax. Code §§17071, et seq.). "Internal Revenue Code" means the Code as amended through a fixed date specified in Rev. and Tax. Code Section §17024.5.

Nonresident trusts (*i.e.* those having no California resident trustee and no California resident noncontingent beneficiary) are taxed only on income from sources within the state (Rev. and Tax. Code §17951). Income from intangible personal property is not income from sources within the state unless the property has acquired a

business situs in the state, except that if the nonresident trust buys or sells such property within the state so regularly as to constitute doing business in the state, the profit or gain derived is income from sources within the state regardless of the situs of the property (Rev. and Tax. Code §17952).

Income of trusts distributed or distributable to nonresident beneficiaries is income from sources within the state only if distributed or distributable out of income of the trust derived from sources within the state. For this purpose, the nonresident beneficiary is deemed the owner of intangible personal property from which the income of the trust is derived. (Rev. and Tax. Code §17953).

3. Credits allowed (to a typical trust): Residents are allowed a credit for income taxes paid to another state (not including any comparable preference, alternative or minimum tax) on income taxable in California subject to the following conditions: (a) the credit is allowed only for taxes paid on income derived from sources within the other state which is taxable under its laws regardless of the residence of the recipient; (b) the credit is not allowed if the other state allows residents of California a credit against its taxes for the tax paid to California; and (c) the credit is limited to that proportion of the tax payable to California as the income subject to tax in the other state and also taxable in California bears to the trust's entire net income upon which the California tax is imposed. (Rev. and Tax. Code §18001).

Nonresidents are allowed a credit against the taxes imposed by California for income taxes paid to the home state subject to the following conditions: (a) the credit is allowed only if the home state either does not tax income of residents of California derived from sources within that state or allows California residents a credit against the taxes imposed by the home state on such income for taxes paid to California; (b) the credit is not allowed for taxes paid to a state which allows its residents a credit against the taxes imposed by that state for income taxes paid to California regardless of whether its residents are allowed a credit against the California taxes for income taxes paid to the home state; (c) the credit is allowed only for such proportion of the taxes paid to the home state as the income taxable in California and also subject to tax in the home state bears to the entire income upon which the taxes paid to the home state are imposed; and (d) the credit shall not exceed the proportion of the tax payable to California as the income subject to tax in the home state and also taxable under California law bears to the entire income taxable in California (Rev. and Tax. Code §18002).

For purposes of applying the credit rules, a trust is considered a resident of the state which taxes the income therefrom regardless of whether the income is derived from sources within that state. (Rev. and Tax. Code §18003).

If a trust is a resident of California and also a resident of another state, that trust, notwithstanding the limitations of Rev. and Tax. Code §§18001 and 18002, summarized above, is allowed a credit against the taxes imposed by California for net income taxes imposed by and paid to the other state, subject to the following conditions: (a) the credit is allowed only for such proportion of the taxes paid to the other state as the income taxable in California and also subject to tax in the other states bears to the entire income upon which the taxes paid to the other state are imposed; and (b) the credit may not exceed such proportion of the tax payable in California as the income subject to tax in the other state and also taxable in California bears to the entire income taxable in California (Rev. and Tax. Code §18004).

A California resident beneficiary of a trust who is taxable on the income of the trust under the California statutes governing the income taxation of trusts and beneficiaries is allowed a credit against the taxes imposed by California on such income for net income taxes paid by the trust to another state on such income subject to the following conditions: (a) the credit is allowed only for such proportion of the tax paid to the other state by the trust as the income of the trust, which is taxable to the beneficiary under the California statutes and also taxed to the trust in the other state, bears to the entire income of the trust upon which the taxes paid to the other state were imposed; and (b) the credit shall not exceed such proportion of the tax payable in California as the income of the trust, which is taxable to the beneficiary under the California statutes and also taxed to the trust in the other state, bears to the beneficiary's entire income upon which the tax is imposed in California (Rev. and Tax. Code §18005).

C. Rate for this tax as it applies to the net taxable amount of a trust —

For calendar year 2000, rates range from 1% on income up to \$5,459 to 9.3% on income over \$35,826 (Rev. and Tax. Code §17041). The tax brackets are adjusted for inflation, and they are the same as for single individuals and for married individuals filing separately.

COLORADO Income Tax

Frederick G. Meyer, Denver
January 1, 2001

A. Numbered footnotes from chart —

1. In order to be taxed under the Colorado income tax law, a trust must either be a “resident trust” or must have Colorado source income. A trust shall be considered a resident trust if the trustee or other fiduciary administering such trust is required to register the trust as a Colorado trust under Colorado Revised Statutes section 15-16-101. The duty to do so arises if the principal place of administration of the trust is within the state of Colorado (C.R.S. §15-16-101). That section defines the “principal place of administration” (unless otherwise designated in the trust instrument) as being (a) the trustee’s usual place of business at which the records pertaining to the trust are kept, or (b) the trustee’s residence if he has no such place of business. In the case of co-trustees, the principal place of administration is deemed to be the place of business of a corporate co-trustee, if there is one, or the usual place of business or residence of an individual trustee who is a professional fiduciary. If there is neither, then the principal place of administration will be the usual place of business or residence of any co-trustee, as agreed upon by the co-trustees.
2. Every resident trust or every nonresident trust with Colorado source income must file a Colorado income tax return if it is required to file a federal income tax return, regardless of whether the return shows any Colorado income tax actually to be due.
3. Whether an income beneficiary or a remainderman has a vested or nonvested interest and whether such person is a resident or nonresident of the state of Colorado will have no impact on the determination of the residence of the trust for Colorado income tax purposes. However, distributions of Colorado source income to a nonresident beneficiary will be subject to withholding on the beneficiary’s share of the Colorado source income unless the beneficiary files a timely return of his total income from sources within Colorado, in which case the trustee shall withhold and pay only the amount of tax disclosed by the beneficiary’s return.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. The income of a resident trust is its federal taxable income with certain modifications and with the addition or subtraction of the share of the trust in the Colorado fiduciary adjustment (C.R.S. §39-22-403). Special provisions are provided for determining the share of a nonresident trust in income from sources within Colorado (C.R.S. §39-22-404).

A trust, resident or nonresident, which receives income from minerals within the state (C.R.S. §39-29-101 *et seq.*), owns any kind of real property within the state (C.R.S. §39-1-101 *et seq.*) or motor vehicles within the state (C.R.S. §42-3-101 *et seq.*), owns personal property used in a trade or business conducted within the state (C.R.S. §39-1-101 *et seq.*) or stores, uses or consumes any articles of tangible personal property purchased at retail within the state (C.R.S. §29-26-201 *et seq.*) will owe a Colorado tax and may be required to file a tax return.

No returns need to be filed in connection with real property or motor vehicle taxes as the trustee will receive papers enabling payment of these taxes directly from the assessor or from the State Department of Motor Vehicles. In order for a trustee to be required to file a return under the personal property tax, the sales tax or the use tax, the trustee either must be conducting an active trade or business within the state and be required to file such a return in the course of conducting that business or the trustee must have paid a Colorado retailer for goods or services without paying the applicable tax at the time of purchase.

The only other tax which requires the filing of a separate return and which might be overlooked by the trustee is the severance tax. This tax is imposed on income from coal, oil and gas, metallic minerals, oil shale or molybdenum production conducted within the state (C.R.S. §39-29-103-109).

3. Credits allowed (to a typical trust): A credit is allowed to a resident trust for taxes paid to another state, the District of Columbia, or a territory or possession of the United States on income derived from sources within those jurisdictions but not in excess of the same proportion of the tax against which the credit is taken which the trust’s federal taxable income from the sources within the other jurisdiction bears to the trust’s entire federal taxable income and the credit cannot exceed the same proportion of the tax against which the credit is taken which the trust’s federal taxable income from sources outside of Colorado bears to its entire federal taxable income (C.R.S. §39-22-108).

C. Rate for this tax as it applies to the net taxable amount of a trust —

An income tax of 4.63% is imposed on the federal taxable income of a resident trust (C.R.S. §39-22-104). A trust is resident in Colorado if its principal place of administration is in Colorado as defined in section 15-16-101 of the Colorado Revised Statutes.

CONNECTICUT Income Tax

Robert T. Gilhuly, Greenwich
February 20, 2001

A. Numbered footnotes from chart —

1. Effective for tax years commencing January 1, 1991 or thereafter, Connecticut imposes an income tax on the "Connecticut taxable income" of all "resident trusts and estates" and on the Connecticut source taxable income of all nonresident trusts and estates [Conn. Gen. Stat., §12-700(a) and (b)]. A nonresident trust is any trust which is not a resident trust [Conn. Gen. Stat., §12-701(a)(5)]. A trust is subject to tax in Connecticut as a "resident trust" if it consists in whole or in part of property transferred by (1) the Will of resident decedent; (2) a person who was a Connecticut resident at the time the property was transferred to a then-irrevocable trust; (3) a person who was a Connecticut resident at the time the property was transferred to a then-revocable trust which has not subsequently become irrevocable; or (4) a person who, if the trust was revocable when the property was transferred to the trust but has subsequently become irrevocable, was a Connecticut resident at the time the trust became irrevocable [Conn. Gen. Stat., §12-701(a)(4)].
2. The Commissioner of Revenue Services is authorized to issue regulations requiring a trust to file a group return and pay tax on behalf of its nonresident beneficiaries [Conn. Gen. Stat. §12-719(b)].
3. If a trust, other than a testamentary trust, has one or more non-resident noncontingent beneficiaries, the Connecticut taxable income of such trust is the sum of the income of the trust derived from or connected with sources within Connecticut and that portion of such income derived from or connected with all other sources which is proportional to the number of resident noncontingent beneficiaries compared to the total number of noncontingent beneficiaries. A noncontingent beneficiary means a beneficiary whose interest is not subject to a condition precedent. Conn. Gen. Stats. §12-701(a)(4).
4. Tax returns are due on the fifteenth day of the fourth month following the close of the taxable year [Conn. Gen. Stat. §12-719(a)]. Quarterly estimated tax payments are required according to a statutory schedule [Conn. Gen. Stat. §12-722] subject to certain safe-harbor provisions. By regulation, the Commissioner may require a trust to file a group return and pay tax on behalf of its nonresident beneficiaries [Conn. Gen. Stat. §12-719(b)].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. "Connecticut taxable income" is taxable income for federal purposes adjusted by the "Connecticut Fiduciary Adjustment," which is the net positive or negative total of certain items relating to income, gain, loss or deduction of a trust. Among the items added are non-Connecticut state and municipal interest income, exempt-interest dividends [as defined under IRC §852(b)(5)] and any interest or dividend income on obligations of a U.S. instrumentality which federal law exempts from federal income tax but not from state income tax, and Connecticut income taxes deducted on the return. Among the items subtracted are any income which federal law prohibits states from taxing, exempt dividends paid by certain regulated investment companies, and interest incurred to purchase or carry obligations which is exempt from federal income tax, but which is subject to the Connecticut income tax. In addition, trusts are required to add back any gain taxed under IRC §644 [Conn. Gen. Stat. §12-701(a)(9)].
3. Credits allowed (to a typical trust): For resident trusts only, a credit is allowed against the tax for any tax paid to another state or political subdivision thereof on income derived from or connected with sources within the qualifying jurisdiction. The credit cannot exceed the amount of tax due to Connecticut on that portion of the income taxed in the other jurisdiction or the actual amount paid to the other jurisdiction, whichever is the lesser.

C. Rate for this tax as it applies to the net taxable amount of a trust —

For tax years commencing on or after January 1992, the tax rate is 4.5%. [Conn. Gen. Stat. §12-700]. In addition, with respect to trusts which are required to pay the federal alternative minimum tax under §55 of the IRC, Connecticut imposes a net Connecticut minimum tax. [Conn. Gen. Stat. §12-700(a)].

DELAWARE Income Tax

Richard G. Bacon, Wilmington
February 28, 2001

A. Numbered footnotes from chart —

1. A resident trust (that is, a trust with a Delaware trustee or trust created by a Delaware domiciliary) which is required to file a federal income tax return is required to file a Delaware income tax return unless it has set

aside its entire federal taxable income for non-resident beneficiaries. A nonresident trust is required to file a Delaware income tax return only if such trust has income from sources within Delaware.

2. Delaware allows a deduction for income accumulated for nonresident beneficiaries so that a trust will be taxed only on income, whether ordinary income or capital gain, that is accumulated for resident beneficiaries.
3. Because Delaware computes Delaware taxable income by starting with federal taxable income, Delaware gives effect to the federal distribution deduction.
4. The Delaware taxable income of a trust is the trust's federal taxable income with certain adjustments such as the subtraction of interest on U.S. obligations. In addition, Delaware allows a deduction for income accumulated for nonresident beneficiaries. Thus, as a practical matter, a trust is subject to Delaware income tax only to the extent that it accumulates income for beneficiaries who are Delaware residents.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. The taxable income of a resident trust is its federal taxable income modified by its share of the fiduciary adjustment. (30 Del. C. §1635) The fiduciary adjustment is the net amount of modifications that relate to items of income of deduction of the trust. (30 Del. C. §1634) The taxable income of a nonresident trust is its share of income, gain, loss and deduction (Delaware source income) included in the federal definition of distributable net income (DNI), increased or decreased by items of income, gain, loss and deduction that are recognized for federal income tax purposes but excluded from DNI and further reduced by the deduction for federal exemption. (30 Del. C. §1639) The taxable income of a nonresident trusts is allocated among beneficiaries in proportion to their respective shares of DNI. (30 Del. C. §1640) References to federal law are to federal tax provisions as they may be effective from time to time. (30 Del. C. §1101).
3. Credits allowed (to a typical trust): Credits are allowed to a resident trust for income taxes paid to another state or the District of Columbia with respect to income derived from sources in those jurisdictions that is subject to Delaware tax. The credit is allowed in proportion to the trust's income from such other jurisdiction relative to the trust's entire taxable income. (30 Del. C. §§1111, 1139).

C. Rate for this tax as it applies to the net taxable amount of a trust —

1. The rates range from 2.2% on income over \$2,000 but under \$5,000, to 5.95% of taxable income over \$60,000. (30 Del. C. §§1102, 1631).

DISTRICT OF COLUMBIA Income Tax

John M. Bixler and Ronald D. Aucutt, Washington, D.C.

February 28, 2001

A. Numbered footnotes from chart —

1. An unincorporated business income tax and a corporate franchise tax are imposed, however, with respect to certain District of Columbia source income of trusts and others (resident and nonresident). The amount of income so taxed is not subject to the regular District of Columbia income tax, but the income of the trust or other such owner subject to D.C. income tax (if any) will include the amount of the exemption allowed for franchise tax purposes.
2. Only the income of resident trusts is subject to District of Columbia income tax (D.C.C. §§47.1809.3 and 47.1809.1). It is unclear whether the income of a revocable trust created by a nonresident who subsequently becomes a resident will become subject to income tax if the trust becomes irrevocable during the grantor's residency in the District of Columbia. The District of Columbia will probably take the position that it will; but see *District of Columbia v. Chase Manhattan Bank*, App. D.C., 689 A.2d 539 (1997), fn. 11, where the court declined to express an opinion on the constitutionality of taxing the entire net income of *inter vivos* trusts based solely on the fact that settlor was domiciled in the District of Columbia at death.
3. See fn. 1. An unincorporated business franchise tax return is required if gross income exceeds \$12,000 even if no tax is due.
4. Federal Gross income as adjusted. D.C.C. 47-1809.5 and 47.1803.2.
5. The tax on the taxable income of an unincorporated business is imposed at the rate of 9.975% (D.C.C. §47-1808.3) and estimated tax payments are required to be made (D.C.C. §47-1812.14).
6. The income of trusts subject to tax is taken from the federal income tax return of the trust, although, because of the difference between the exemption allowed to certain trusts under federal and District of Columbia law, a return may be required in the District of Columbia but not under federal law and is adjusted by certain allowable subtractions and additions; for example, interest on U.S. obligations and income taxed on the District of Columbia unincorporated business franchise income tax return is subtracted, as are distributions to beneficiaries regardless of where domiciled.

B. Summary description of tax computation components —

1. Starting amount: Federal gross income as adjusted.
2. Gross income of a trust for income tax purposes is federal gross income with certain modifications (D.C.C. §§47-1809.3 and 47-1803.2). References to federal tax law mean the Internal Revenue Code of 1986, as amended from time to time (D.C.C. §47-1801.28A)).
3. Credits allowed (to a typical trust): A credit is allowed to residents for taxes paid to any state, territory or possession of the United States, or to any political subdivision on income attributable to that jurisdiction (D.C.C. §§47-1809.3 and 47-1806.4 and *see District of Columbia v. Chase Manhattan Bank*, App. D.C., 689 A.2d 539 (1997)).

C. Rate for this tax as it applies to the net income of a trust —

The rates for 2001 are 5% of taxable income up to \$10,000, 7.5% of taxable income from \$10,000 to \$30,000, and 9.3% of taxable income over \$30,000, with reductions scheduled for the next three years subject to certain fiscal and economic triggers. (D.C.C. §§47-1806.3, 47-1809.3). A \$100 credit against trust net income is allowed (D.C.C. §47-1809.5). In addition, trusts which engage in business in the District of Columbia are subject to the unincorporated business tax (D.C.C. §§29-621, 47-1808.1). A 9.975% tax is imposed on unincorporated businesses' taxable income derived from sources within the District of Columbia. The minimum tax is \$100 (D.C.C. §47-1808.3).

FLORIDA Income Tax

John T. Gaubatz, Coral Gables
February 8, 2001

Florida does not impose an income tax.

FLORIDA Intangibles Tax

John T. Gaubatz, Coral Gables
February 8, 2001

A. Numbered footnotes from chart —

1. A number of years ago, the Florida Supreme Court held that the situs of trusts for the purposes of the intangible personal property tax is determined by the domicile of the trustee having control over the trust assets or, in the event of a business office, where the trust assets are being administered.

B. Summary description of tax computation components —

1. Starting amount: Value of intangible personal property, except:
 - a. Money
 - b. Franchises
 - c. Partnership interests
 - d. Florida and U.S. government obligations
 - e. Qualified plan interests
 - f. Mortgage obligations
 - g. Other lesser exemptions
 - h. An example of \$20,000 for an individual, and \$40,000 for a married couple.
2. Principal adjustments to starting amount.
3. Credits allowed: Ad valorem taxes imposed by other states.

C. Rate for this tax as it applies to the net taxable amount of a trust —

1. One mill (equal to one-tenth of one cent) on each dollar of the value of intangible personal property with a Florida situs (i.e., 0.001% x the value of the property).
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GEORGIA Income Tax

John A. Wallace, Atlanta
March 1, 2001

A. Numbered footnotes from chart —

1. The Official Code of Georgia Annotated section 48-7-22(a)(1)(C) imposes the tax on trusts with Georgia beneficiaries. Although the statute itself provides no formula for apportionment between resident and nonresident beneficiaries, the statutory language under the Official Code of Georgia Annotated section 48-7-22(a)(3)(A) provides that income received by a resident fiduciary shall not be subject to tax when the income is accumulated for, is dis-

tributed, or becomes distributable during the taxable year to a nonresident of Georgia, and, the income was received from business done outside Georgia or from property held outside Georgia. This statutory exception appears to provide the basis for apportioning certain income as nontaxable for Georgia purposes. Informal discussions with the Georgia Revenue Department have provided their interpretations which are reflected in the comments which follow.

2. The statute could be read to tax in Georgia (to the extent of the gains distributed) a trust that distributes capital gains to a Georgia income beneficiary. Georgia law follows the federal pattern of distribution deductions.
3. The answer is apparently “yes” if the undistributed income could, under the terms of the trust, be distributed to a Georgia beneficiary. The statute provides no guidance as to the apportionment among resident and non-resident current income beneficiaries.
4. The answer is probably “yes”. The statute can be read to require such taxation.
5. The answer is probably “yes” because the statutory scheme does not exclude such items from taxation.
6. The statutory language suggests that the share of the income accumulated for the benefit of a Georgia remainderman would be subject to Georgia tax. It is unknown whether there would be a similar result if the accumulated income could later be distributed to current income beneficiaries who are not Georgia residents.
7. The statute can be read to permit such treatment if the Georgia beneficiary is eligible to receive a distribution from these sources, but it is not certain.
8. The answer is probably “yes” because the statute is broad enough to require such treatment.
9. The answer is probably “no” because the statute is broad enough to require such treatment in all cases.
10. Where a federal return is required to be filed, a state return is required even if there is no income subject to Georgia tax [Reg. §560-7-8.01(1)(c) and (d)].
11. Regulation §560-7-3-.07(2) provides that Code provisions and regulations do not apply if either principal or income remains attributable to the grantor (determined in accordance with federal standards).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal adjusted gross income (AGI) as adjusted.
2. Trusts with resident or nonresident fiduciaries are similarly taxed on net trust income (O.C.G.A. §48-7-22). The net income of a trust is computed in the same manner and on the same basis as for individuals [O.C.G.A. §48-7-22(b)]. For individuals, taxable income for Georgia income tax purposes is federal adjusted gross income with certain modifications (O.C.G.A. §§48-1-2, 48-7-27). The tax is imposed at the same rate as for single individuals [O.C.G.A. §48-7-22(a)(2)].
3. Credits allowed (to a typical trust): Pursuant to the Official Code of Georgia Annotated section 48-7-28, a Georgia resident individual under certain circumstances may deduct from the Georgia income tax a portion of income tax paid to other states. Because a Georgia trust is taxed at the same rate as for individuals, the deduction from Georgia income tax of certain taxes paid to the states appears to apply to such Georgia trust.

C. Rate for this tax as it applies to the net taxable amount of a trust —

The income tax for trusts based on single individual rates ranges from 1% on net income up to \$750 to 6% on net income exceeding \$7,000 (O.C.G.A. §48-7-20).

HAWAII Income Tax

Arthur B. Reinwald, Honolulu
June 8, 2001

A. Numbered footnotes from chart —

1. The taxable income of a nonresident trust is limited to the income derived from sources within Hawaii [H.R.S. §235-4(e)(1)]. Income from real property or from tangible personal property is deemed to come from where the property has its situs.
2. The primary test is whether the trust is a “resident trust” within the meaning of H.R.S. §235-1. A “resident trust” is defined as one where the trustee is a resident of Hawaii or the administration of which is carried on in the state (H.R.S. §235-1). Even if all beneficiaries are nonresident, trust assets are deemed to have acquired a Hawaii situs in a resident trust. See, *In re McCormack*, 64 Hawaii 258, 640 P.2d 282 (1982). However, under H.R.S. §235-4.5(a) the trust excludes from gross income any intangible income, such as dividends and interest (including capital gains) if all beneficial interests are held by beneficiaries residing outside of the State (see Appendix B1 below).
3. If any trustee is outside the state, the trust will be deemed a resident trust (i) if the administration is carried on wholly in the State, or (ii) if the administration is partly carried on in the State, and one-half or more of the trustees are resident individuals, or corporations or partnerships formed under Hawaii law. Administrative Rules §18-235-1.17. Although not stated in the Administrative Rules, it appears that if the administration is carried on outside the state and a majority of the trustees do not reside in Hawaii, the trust will be deemed a nonresident trust, taxable only on Hawaii source income. See Administrative Rules §§18-235-4-06(f), 18-235-4-08(b); H.R.S. §235-4.

4. See Hawaii's General Excise Tax, H.R.S. chapter 237.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
Taxable income for Hawaii income tax purposes is federal taxable income with certain modifications (H.R.S. §§235-2.3, 235-4). Intangible property will be deemed to have the situs of the owner's domicile, unless the property has acquired a business situs at another place, in which case the place of the business situs is deemed the situs of the property. Absent facts to the contrary, intangible property will usually acquire a business situs at the place where the trust is administered [Hawaii Regulations §235-4(g)]. Under H.R.S. §235-4.5(a) the trust excludes from gross income any intangible income, such as dividends and interest (including capital gains) if all beneficial interests are held by beneficiaries residing outside of the State.
2. Credits allowed (to a typical trust): Resident trusts are allowed a credit for taxes paid to another jurisdiction on income derived from sources outside of Hawaii, provided the other jurisdiction does not allow a credit against its tax for taxes imposed by Hawaii on that income. The credit may not reduce the tax payable to Hawaii below that which would have been payable had the tax been imposed only on the Hawaii source income (H.R.S. §235-4.5(c) Adm. Rules §18-235-4-06(e)).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 1.60% on taxable income up to \$2,000 to \$2,952 plus 8.75% of taxable income in excess of \$40,000 [H.R.S. §235-51(d)]. The rates are scheduled to decline to 1.50% on taxable income up to \$2,000 to \$2,842 plus 8.5% of taxable income in excess of \$40,000 after December 31, 2000 and 1.40% on taxable income up to \$2,000 to \$2,678 plus 8.25% of taxable income in excess of \$40,000.... If the trust has a net capital gain, the tax imposed on the trust shall not exceed the sum of: (1) the tax computed at the regular rates on the greater of: (A) the taxable income reduced by the amount of net capital gain, or (B) the amount of taxable income taxed at a rate below 7.25%, plus (2) a tax of 7.25% of the amount of taxable income in excess of the amount determined under provision (1) [H.R.S. §235-51(f)]. Hawaii also imposes a general excise tax under Chapter 237 on all persons doing any business in Hawaii at the rate of 4% of gross receipts from trade, business, commerce, sales, interest, discount, rentals, royalties, fees and services.

D. Background

Under H.R.S. §§235-2.3 and 235-3, the Internal Revenue Code is adopted as the Hawaii income tax law, except for specific sections, none of which apply to this study.

H.R.S. §235-1 has some applicable definitions:

“Nonresident estate” or nonresident trust” means one other than resident.

“Resident estate means an estate of a resident decedent the fiduciary of which was appointed by a court of this State and the administration of which is carried on in this State, and “resident trust” means a trust of which the fiduciary is a resident of the State or administration of which is carried on in the State.

H.R.S. §235-4 sets out of the ground rules for resident and nonresident estates and trusts:

(e) (1) The income of a resident estate or trust shall be computed without regard to source in the State. The income of a nonresident estate or trust shall be that received or derived from sources in the State.

(2) A beneficiary of an estate or trust, or person treated as the owner of any portion of a trust, who is taxable upon income thereof under the Internal Revenue Code, shall be taxed thereon as herein provided, irrespective of the taxability of the estate or trust or whether it is required to make a fiduciary return under this chapter. If all such income consists of income which would be taxable under this chapter if received directly by the beneficiary or person, the beneficiary or person shall be taxed upon all of it. If some of it consists of income which would not be taxable if received directly by the beneficiary or person, then unless the trust instrument provides otherwise the income of each such beneficiary or person shall be conclusively presumed to have been received or derived out of each class of income of the estate or trust, and the beneficiary or person shall be taxed upon such part of it as would be taxable if received directly by the beneficiary or person.

H.R.S. §235-4.5 has specific provisions for taxation of trusts.

§235-4.5. Taxation of trusts, beneficiaries; credit.

(a) There shall be excluded from gross income any intangible income, such as dividends and interest, earned by a trust sited in this State to the extent that, during the taxable year of the trust, the beneficial interest in the trust shall be held by a beneficiary or beneficiaries residing outside this State. This exclusion shall not apply to income received from real property held in a land trust formed under chapter 558.

(b) If a trust sited in this State owns one hundred percent of the stock of a foreign corporation which does not engage in an active trade or business but acts solely as a holding company receiving intangible income, such as dividends and interest, the intangible income of the foreign corporation shall be excluded from gross income for Hawaii income tax purposes but only to the extent that the income of the trust beneficiaries is excluded from taxation under subsection (a). As used in this section, foreign corporation means a corporation not created or organized in the United States or under the laws of the United States, Hawaii, or any other state.

(c) Any resident beneficiary of a trust with a situs in another state may claim a credit for income taxes paid by the trust to the other state on any income received which is attributable to assets other than intangibles.

IDAHO Income Tax

Stephen E. Martin, Idaho Falls
March 2, 2001

A. Numbered footnotes from chart —

1. A return must be filed by every trust resident in Idaho having gross income of \$100 or more for the year (Id. C. §63-3030).
2. In the event that a nonresident beneficiary of a trust fails to file an Idaho income tax return reporting all or any part of distributable net income taxable in Idaho or fails to pay any tax due thereon, the trust making the payment or distribution is taxable upon the amount of such distribution or payment at the rates applicable to trust income [Id. C. §63-3022(g)]. (Rule 109)

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. An income tax is imposed on the income of every resident trust and on the taxable income of nonresident trusts derived from Idaho sources. Taxable income for Idaho income tax purposes is federal taxable income with certain modifications (Id. C. §63-3022).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for taxes paid to another state on income from sources within that state unless the other state allows a credit against taxes imposed on the trust by it for Idaho taxes paid on the same income. The credit is limited to the proportion of that tax which the adjusted gross income from such other state bears to total adjusted gross income, provided that the credit may not exceed the actual tax payable to the other state (Id. C. §63-3029).
4. A capital gains deduction is available under certain circumstances where not available under federal law.

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 1.6% on income up to \$1,000 to \$1,308.00 plus 7.8% of income over \$20,000. Each year the State Tax Commission will prescribe a factor which will cause the rates to be adjusted so that inflation will not result in a tax increase. (Id. C. §63-3024).

ILLINOIS Income Tax

David R. Hodgman, Chicago
February 28, 2001

A. Numbered footnotes from chart —

1. Illinois Compiled Statutes (ILCS) Chapter 35, section 5/1501(a)(20)(D) (35 ILCS 5/1501(a)(20)(D)) treats trusts as irrevocable on the date the grantor ceases to be treated as a grantor under Internal Revenue Code sections 671-678.
2. Under 35 ILCS 5/201(b)(3), the tax rate is 3%; but under 35 ILCS 5/201(d), Illinois also assesses an additional tax of 1.5% as an “additional personal property tax replacement income tax.” Thus, the total tax is 4.5% (although a small reduction is allowed as a “credit” equal to a portion of the 1.5% personal property tax replacement income tax under 35 ILCS 5/201(i)).
3. Note that under 35 ILCS 5/203(c)(I) and (f), capital gains accrued prior to August 1, 1969 are not subject to income tax.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. See 35 ILCS 5/203(3) for additions to and subtractions from federal taxable income to determine Illinois taxable income.
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for any tax imposed on net income and paid to another state on income that is also subject to the Illinois tax (ILCS 5/601(b)(3)).

C. Rate for this tax as it applies to the net taxable amount of a trust —

A 3% tax is imposed on net income of trusts in Illinois (35 ILCS 5/201(b)(3)). Trusts are also subject to a personal property replacement tax equal to 1.5% of net income (35 ILCS 5/201(d)). A credit is allowed against the income tax for a small portion of the tax imposed under the personal property replacement tax. (35 ILCS 5/201(l)). Any credit unused in the year the credit is computed may be carried forward five years (35 ILCS 5/201(i)).

INDIANA Income Tax

C. Daniel Yates, Indianapolis
March 16, 2001

A. Numbered footnotes from chart —

1. If the source of income is from real estate rents or royalties derived within the state (I.C. §6-3-2-2).
2. Unless the trust situs is in another state and at least one of two or a majority of the trustees reside out of state.
3. If the trust has any gross income from Indiana sources, it must file a return [I.C. § 6-3-1-4-1(7)]. Practically speaking, even though \$1 of income creates a filing requirement, if there is no tax due, there is little consequence as the penalty is equal to 10% of the tax due with a minimum penalty of \$5 and, therefore, the maximum exposure is \$5.
4. A "business trust" [I.C. §23-5.1-2] is subject to the Indiana Gross Income Tax [I.C. §6-2.1-1-16; 45 IAC 1.1-1-22].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. Adjusted gross income for Indiana income tax purposes is federal taxable income as defined in Internal Revenue Code section 641(b) reduced by U.S. Government interest income [I.C. §§ 6-3-1-3-3.5(c)].
3. Credits allowed (to a typical trust): 40% of gifts to Indiana colleges with maximum of \$100. Attach CC-40 Form.

C. Rate for this tax as it applies to the net taxable amount of a trust —

A tax of 3.4% is imposed upon the taxable gross income of resident trusts and on the portion of the taxable gross income derived from Indiana sources by nonresident trusts (I.C. §§ 6-3-1-14, 6-3-2-1). Note: A new form IT-41, Revised 12/00, should be used.

IOWA Income Tax

Margaret Van Houten, Des Moines
March 5, 2001

A. Numbered footnotes from chart —

1. Under Iowa Administrative Code, Title 701, §89.3, the situs of a trust is what subjects it to tax.
 - a) The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of *inter vivos* trusts.
 - b) If an *inter vivos* trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an *inter vivos* trust which is subject to the federal income tax grantor trust rules is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.
 - c) If an *inter vivos* trust (other than a trust subject to the federal income tax grantor trust rules) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: the residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust,

not subject to the federal grantor trust rules, is not a controlling factor as to the situs of the trust, unless the person is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

2. It is a factor.
3. If a trust is subject to Iowa income tax based on the relevant facts in the case involved, that tax will be on "all" (there is no provision for a "pro rata" taxability based on less than all of the trustees being residents of Iowa).
4. But must follow K-1s through.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal adjusted gross income (AGI) as adjusted.
2. Iowa imposes an income tax on the net income of resident trusts and on Iowa source income of nonresident trusts (Iowa C. §422.5). Net income for Iowa income tax purposes is federal adjusted gross income with certain modifications (Iowa C. §422.7).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for taxes paid on income derived from out of state sources (Iowa C. §422.8).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from .36% on income up to \$1,000 to \$3,304.27 plus 8.98% on income over \$52,290 (Iowa C. §§422.5, 422.6). Effective for years beginning on or after January 1, 2000.

KANSAS Income Tax

Richard L. Zinn, Lawrence
February 28, 2001

A. Numbered footnotes from chart —

1. If the trust is administered in Kansas.
2. If the source is in Kansas.
3. If a federal return is required from a resident trust or if there is withholding tax due for the non-resident beneficiaries of a resident trust. A non-resident trust is one not administered in Kansas, and is required to file a Kansas return only if the income is from Kansas sources.
4. In that federal taxable income is the starting point for computation of Kansas fiduciary income.
5. Limited to counties and cities in which the governing body has, by resolution, imposed an intangible tax. (K.S.A. §12-1,100).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal adjusted gross income (AGI) as adjusted.
2. Kansas imposes an income tax on resident trusts on the Kansas source income of nonresident trusts (K.S.A. §§79-32,134 and 79-32,136). Kansas taxable income is federal taxable income with certain modifications (K.S.A. §§79-32,134 and 79-32,136).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes paid to another state on income derived from sources in such other state (K.S.A. §79-32,111).

C. Rate for this tax as it applies to the net taxable amount of a trust —

The trustee of a resident trust is required to withhold from amounts distributed or distributable to a nonresident beneficiary an amount equal to 2.5% of that portion of the Kansas nonresident adjusted gross income of such nonresident beneficiary which is derived from the trust [K.S.A. §79-32,137(c)]. For 2000 tax year, and thereafter, 3.5% of taxable income not over \$15,000, to \$525 plus 6.25% of taxable income over \$15,000 but not over \$30,000, to \$1,462.50 plus 6.45% of taxable income of \$30,000 and over (K.S.A. §79-32,110).

KENTUCKY Income Tax

John R. Cummins, Louisville*
February 28, 2001

*With invaluable assistance from J. Larry Bailey,
CPA, of Louisville.

A. Numbered footnotes from chart —

1. There must be income from real or tangible personal property in Kentucky. Income from intangible personal property is not considered a "source of income" within the state.

2. If there is more than one current income beneficiary, some of whom are Kentucky residents and some of whom are not, the taxation of undistributed ordinary income and of capital gains both are based upon the portion of the ordinary income distributed to the Kentucky residents and nonresidents that year. For instance, if in that year 40% of the ordinary income distributions are to a Kentucky beneficiary and 60% are to nonresident beneficiaries, the Kentucky trust will pay Kentucky income tax on 40% of the undistributed ordinary income and on 40% of the capital gains.
3. Where there is gross income, but all the beneficiaries are nonresident you will take a 100% nonresident beneficiary deduction on the return.
4. Kentucky follows Federal rules. Under the proposed Section 643 regulations, capital gains are includible in DNI under a variety of circumstances depending on the trust terms, the exercise of trustee discretion and local law. Kentucky does not have the Revised Uniform Principal and Income Act or a total return statute.
5. Stocks and mutual funds are now exempt. A Kentucky trust is not subject to Kentucky intangibles tax on the pro rata share owned by nonresidents.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Taxable income for Kentucky income tax purposes is federal adjusted gross income with certain adjustments (Ken. Rev. Stat. §141.010).
2. Kentucky imposes an income tax on resident trusts and on the net income of nonresident trusts from business, trade, professions or other activities carried on in the state, tangible property located in the state and intangible property with a business situs in Kentucky (Ken. Rev. Stat. §§141.020, 141.030).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes paid to another state, but the tax cannot be reduced more than it would be if the income from the other state were not included in income by Kentucky. Nonresidents are not liable for any tax if their home state has reciprocal provisions exempting resident of Kentucky from tax (Ken. Rev. Stat. §141.070).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 2% on income up to \$3,000 to 6% on income of \$8,000 and over (Ken. Rev. Stat. §141.023).

LOUISIANA Income Tax

Edward F. Martin, New Orleans

June 8, 2001

A. Numbered footnotes from chart —

1. Any testamentary trust of a domiciliary (other than a trust of non-Louisiana real property) will be deemed a Louisiana trust whose income is taxable in Louisiana. Lifetime trusts are taxable only when the trust instrument states that it is governed by Louisiana law or when the trust is silent as to governing law and the trust is administered in Louisiana. La. R.S. §47:300.10(3).
2. Perhaps. Louisiana Revised Statute 47:162A requires all trustees to file returns if gross income exceeds \$6,000, net income exceeds \$2,500 or there is a non-Louisiana beneficiary.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal adjusted gross income (La. R.S. 47:300.6).
2. Louisiana imposes an income tax on resident trusts and on Louisiana source income for nonresident trusts (La. R.S. §§47:300.6, 47:300.7).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 2% on Louisiana taxable income up to \$10,000 4% on the next \$40,000 to 6% on income over \$50,000 (La. R.S. §§47:300.1).

MAINE Income Tax

Philip C. Hunt, Portland

February 15, 2001

A. Numbered footnotes from chart —

1. Me. Rev. Stat. Ann. title 36, §5175 (West, 1964).
2. Me. Rev. Stat. Ann. title 36, §5102(4), under Maine's Tax Code, the criterion is "domicile" rather than "residence", and the answers should be read as referring to domicile rather than residence. Under the statute the

domicile of the settlor is the only criterion (unless the trust is registered in the Maine Court at the principal place of administration pursuant to Me. Rev. Stat. Ann. title 18A, §7-101). But see *City of Augusta v. Kimball* 91 ME 605, 40A.666(1898) holding that nonresident trustees are not subject to taxation in Maine where the trust assets are held outside the state. In 1992, the Maine Bureau of Taxation, in an unpublished reconsideration decision by the State Tax Assessor on a refund claim, concluded that even though a trust was a “resident trust” under Section 5102(4), where the sole trustee was a nonresident and all trust assets were physically located out of state, Maine had no jurisdiction to collect an income tax from the trustee.

3. See Me. Rev. Stat. Ann. title 18A, §7-101 and title 36, §5102(4).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. Maine imposes a tax on the taxable income of a resident trust (Me. Rev. Stat. Ann. title 36, §5160). The taxable income of the trust is federal adjusted gross income modified by an adjustment apportioning additions and subtractions to federal taxable income between the trust and the beneficiaries (Me. Rev. Stat. Ann. title 36, §§5163, 5164). The taxable income of a nonresident trust is limited to income derived from sources in Maine (Me. Rev. Stat. Ann. title 36, §5175).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes imposed in another state or local government or by the District of Columbia or any political subdivision of a foreign country that is comparable to a state (Me. Rev. Stat. Ann. title 36, §§5165, 5217-A).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 2% on income up to \$4,150, 4.5% on income from \$4,150-\$8,249, 7% on income from \$8,250-\$16,499, and 8.5% on income over \$16,500. The dollar amounts are indexed annually for inflation (Me. Rev. Stat. Ann. title 36, §§5111, 5403). Stated dollar amounts are correct as of 2001. Dollar amounts for 2002 have been increased to \$4,200, \$8,350 and \$16,700.

MARYLAND Income Tax

Donald R. Mering, Baltimore

February 27, 2001

A. Numbered footnotes from chart —

1. Generally, nonresident trusts are taxed on income derived from real or tangible personal property located in Maryland, income derived from a business, profession or trade that is wholly carried on in the state, or if carried on in part in Maryland, that part of the income allocable to the part carried on in Maryland [Md. Code Ann. Tax-General §10-210(a)-(b)].
2. A fiduciary of a trust of which the grantor is a current resident of [Maryland] or which was “created, or consists of property transferred, by the will of a decedent who was domiciled in [Maryland] on the date of the decedent’s death” is considered a resident for fiduciary income tax purposes. Md. Code Ann. Tax-General §10-101(h)(1)(iii).
3. The trustee will be characterized as a resident fiduciary if “1. the trust was created, or consists of property transferred, by the will of a decedent who was domiciled in [Maryland] on the date of the decedent’s death; 2. the creator or grantor of the trust is a current resident [Maryland]; or 3. the trust is principally administered in [Maryland].” Md. Code Ann. Tax-General §10-101(h)(iii). A trust may be characterized as “principally administered in Maryland” if a trustee resides or has its principal place of business in Maryland or if the situs of the trust is otherwise considered in Maryland.
4. Maryland defines “Federal adjusted gross income” for a fiduciary as the fiduciary’s taxable income as determined under the Internal Revenue Code, increased by the amount allowed to the fiduciary as a deduction for a personal exemption under §642 of the IRC. Md. Code Ann. Tax-General §10-101(c-1)(2).
5. Under certain circumstances, Maryland permits a nonresident beneficiary deduction. Md. Code Ann. Tax-General §10-207(o)(2).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. A tax is imposed on the taxable income of a resident trust (Md. Code Ann. Tax-General §10-102). Taxable income is federal adjusted gross income with certain modifications (Md. Code Ann. Tax-General §§10-101, 10-203, 10-204). Nonresident trusts are taxable on Maryland source income including: income derived from real or tangible personal property in Maryland; income derived from a business, profession or trade that is carried on in the state or, if carried on in part in the state, that part of the income allocable to the part carried on in the state (Md. Code Ann. Tax-General §10-210).

- Credits allowed (to a typical trust): Credit is allowed to resident trusts for income taxes paid to other states if such other states do not grant credit similar to that of Maryland for nonresidents and provided that the tax is not reduced below what would be payable if the out of state income were not included in Maryland income. The credit allowed a nonresident trust for tax on income paid to the home state is a fraction, the numerator of which is the Maryland taxable income and the denominator of which is the taxable income on which the nonresident paid the tax to the home state (Md. Code Ann. Tax-General §10-703).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 2% on income up to \$1,000, 3% on income between \$1,001 and \$2,000, 4% on income between \$2,001 and \$3,000, and 4.85% on income in excess of \$3,000 (Md. Code Ann. Tax-General §10-105). However, due to recent legislation, the tax rate will change. For 1999 and 2000 the tax rate on taxable income in excess of \$3,000 is 4.85%. Md. Code Ann. Tax-General §10-105(a) (2000 Supp.) For the year 2001 this rate will be reduced to 4.8%. For the year 2002 the rate will be further reduced to 4.75%. Md. Code Ann. Tax-General §10-105(a)(iv-v) (2000 Supp.).

MASSACHUSETTS Income Tax

George W. Butterworth III, Boston
March 2, 2001

A. Numbered footnotes from chart —

- Mass. Gen. L. Ch. 62, §10(e). Note trustee is required to file Form 2G, an information return.
- Mass. Gen. L. Ch. 62, §§4, 5A(a).
- The determination of the taxation of a trust is a two-step inquiry:

Step One: Is the trust a “resident” trust or nonresident trust? A “resident” trust is (a) a testamentary trust created under the will of a Massachusetts decedent, or (b) an *inter vivos* trust with at least one Massachusetts trustee and of which at least one grantor was a Massachusetts resident at the creation of the trust, at death, or during any part of the tax year at issue [Mass. Gen. L. Ch. 62, §10(a),(c)]. A nonresident trust is taxed only on Massachusetts source income [Mass. Gen. L. Ch. 62, §§5A, 10(d)]. [Mass. Gen. L. Ch. 62, §10(d)].

Step Two: For resident trusts, are the beneficiaries Massachusetts residents? The share of the income of a Massachusetts beneficiary is taxed to the trust [Mass. Gen. L. Ch. 62, §10(a)]. The share of the income of a nonresident beneficiary is taxed to the beneficiary. Unborn persons, unascertained members of a class, and persons with uncertain interests are treated as if they were residents of Massachusetts (i.e., income accumulated for such persons is taxed to the trust) [Mass Gen. L. Ch. 62, §10(a)]. In certain situations, a trust can use the beneficiary’s unused personal exemptions to reduce or eliminate the trust’s income tax (Mass. Gen. L. Ch. 62, §12).

- Mass. Gen. L. Ch. 62, §10(a)(c).

B. Summary description of tax computation components —

- Starting amount (from chart, line F): Gross income for Massachusetts income tax purposes is federal gross income with certain modifications [Mass. Gen. L. Ch. 62, §§1, 2(a)]. Massachusetts gross income is divided into three classes or parts consisting of different types of income and taxed at different rates [Mass. Gen. L. Ch. 62, §§2(b), 2(c), 2(d), 2(e)].
- Resident trusts and nonresident trusts which earn income in Massachusetts are subject to the Massachusetts income tax (Mass. Gen. L. Ch. 62, §§4, 5A, 25). A corporate trustee engaged in any business activity or transaction in the state is taxable on its income whether or not it maintains an office or place of business in Massachusetts [Mass. Gen. L. Ch. 62, §8(a)].
- Credits allowed (to a typical trust): Credit is allowed resident trusts for taxes paid to another state, territory or possession of the United States or Canada or provinces of Canada on account of income subject to Massachusetts tax (Mass. Gen. L. Ch. 62, §6).

C. Rate for this tax as it applies to the net taxable amount of a trust —

For years commencing on or after 1/1/01, rates are 12% for Part A taxable income, 5.6% for Part B taxable income, and 0% to 5% for Part C taxable income, depending on the holding period.

MICHIGAN Income Tax

Robert B. Joslyn, St. Clair Shores
February 28, 2001

A. Numbered footnotes from chart —

- Mich. Dept. of Treas. Instructions for Filing Return MI-1041 (2000), page 2.

2. Notwithstanding Michigan's income tax law described in footnote 4 below, the Michigan Court of Appeals has held that the residency of the settlor in Michigan at the time the trust became irrevocable is not, in itself, sufficient to justify the imposition of the Michigan income tax (even where a parcel of non-income producing real estate in Michigan is owned by the trust). In this case, the location of the other trust property, the beneficiaries, the trustees, and the place of administration were all outside Michigan [*Blue v. Michigan Department of Treasury*, 185 Mich. App. 406 (1990)]. See also Mich. Dept. of Treas. Instructions for Filing Michigan Fiduciary Income Tax Return MI-1041(2000), page 2.
3. Except as provided in the *Blue* case described in footnote 2 above, Michigan's income tax law applies to trusts created by the will of a decedent domiciled in Michigan at death or by a grantor domiciled in Michigan at the time the trust became irrevocable [Mich. Comp. Laws §§206.14(3) and 206.18(1)(c)].
4. In addition to an income tax, Michigan also has a single business tax ("MSBT"). The MSBT is a business tax of 2.3% on (a) income derived from a business (gross income less depreciation after certain adjustments) or (b) 1/2 of gross business receipts (after certain adjustments), whichever is less (reduced by several credits). However, there is no MSBT if the tax base is under \$45,000 [Mich. Comp. Laws §208.35(1)(a)].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI)
2. Principal adjustments to starting amount (for a typical trust) that:
 - a) Increase the taxable amount: By each other state's municipal bond interest.
 - b) Decrease the taxable amount: By (i) interest and gains/losses on US obligations (as well as expenses relating thereto), (ii) rents, royalties, and gains/losses from property (and partnerships having property) in another state, (iii) pre-10/01/67 gains/losses (if elected), and (iv) business income derived solely in another state (Mich. Comp. Laws §§206.110-206.195).
3. Credits allowed (to a typical trust):
 - a) Taxes imposed on the trust by other states:
 - 1) A resident trust is allowed a credit for income taxes imposed by another state, political subdivisions, the District of Columbia or a Canadian province on income from sources outside of Michigan which is also subject to Michigan tax (i.e., to the extent not excluded as described above) (Mich. Comp. Laws §206.255).
 - 2) A nonresident trust is allowed a credit against the Michigan tax for any income tax imposed by the home state or political subdivision from Michigan source income subject to Michigan income taxes, but not in excess of the Michigan tax. The credit is allowed on a reciprocal basis only (Mich. Comp. Laws §206.256).
 - b) Other activities of the trust:
 Resident trusts are also allowed a credit equal to 50% of their charitable contributions not deducted in arriving at federal taxable income made to public libraries, public broadcast stations, institutions of higher learning in the state and other specified charitable organizations. The credit may not exceed 10% of the tax determined without regard to the credit or \$5,000, whichever is less [Mich. Comp. Laws §206.260(3)].

C. Rate for this tax as it applies to the net taxable amount of a trust — 4.2%

MICHIGAN Intangibles Tax

Robert B. Joslyn, St. Clair Shores
February 28, 2001

Effective January 1, 1998, the Michigan intangible personal property tax was repealed.

MINNESOTA Income Tax

Edward G. Heilman, Minneapolis
February 21, 2001

A. Numbered footnotes from chart —

1. Minn. Stat. Ann. §§290.25, 290.01(7b) (West Supp. 2001).
2. Minn. Stat. Ann. §§290.014(Subd. 3).
3. The State of Minnesota revised its definition of a resident trust from looking to where trust is "administered" to domicile at the time the trust is created by will or when it became irrevocable [Minn. Stat. Ann. §§290.01(7b)] (West Supp. 2001).
4. In answering the questionnaire, it is assumed that the trust is not a grantor trust. Also, Minnesota does impose

a tax on beneficiaries who receive accumulation distributions, in a manner similar to Internal Revenue Code sections 665-668.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. Taxable income of trusts is subject to Minnesota tax and taxable income is federal taxable income with certain modifications [Minn. Stat. Ann. §§290.01(Subd. 19a) and (Subd. 19b)]. There are special rules for the apportionment or allocation of income from property or from trade or business situated or conducted within or without the state [Minn. Stat. Ann. §290.17].
3. Credits allowed (to a typical trust): A trust is allowed a credit for taxes paid to another state or to Canada on income allocated or apportioned to Minnesota. The credit is determined by multiplying the Minnesota tax payable by the ratio resulting from dividing the income subject to tax in the other jurisdiction that is also subject to Minnesota tax by the trust's federal adjusted gross income, as modified by Minnesota law. The credit cannot exceed the amount of tax paid to the other jurisdiction on the income earned within the other jurisdiction also subject to Minnesota tax and cannot reduce Minnesota taxes to an amount less than would be payable if the income allocable to the other jurisdiction were excluded from Minnesota taxable income (Minn. Stat. Ann. §290.06).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 5.35% on income up to \$12,840 to 7.85% on income exceeding \$51,010. For taxable years after 12/31/2000, the rate brackets are adjusted for inflation each year [Minn. Stat. Ann. §290.06 (2c)-(2d)].

MISSISSIPPI Income Tax

David B. Grishman, Jackson
March 9, 2001

A. Numbered footnotes from chart —

1. Miss. Code Ann. §§27-7-5, 27-7-23(b) (1972).
2. The Income Tax Law of 1952 does not define the terms "resident" or "nonresident" trust (See Miss. Code Ann. §27-7-1 *et seq.*). However, Reg. 1001 generally provides that a trust's income is taxed to the fiduciary.
3. See Reg. 1001.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Mississippi imposes an income tax on the entire net income of resident trusts and on the entire net income from property owned or sold, and, from every business, trade or occupation carried on in the state by nonresident trusts (Miss. Code Ann. §27-7-5). For nonresident trusts, income from sources within Mississippi includes, but is not limited to: income from intangibles which have a business, commercial or actual situs in Mississippi; compensation for services performed within Mississippi; rents or royalties from or interest in property in the state; and income from all transactions within the state, whether or not the trust is qualified to do business in the state, maintains an office in the state or the transaction is in interstate or foreign commerce (Miss. Code Ann. §27-7-23).
2. Credits allowed (to a typical trust): A trust is not allowed a credit for income taxes paid to another state.

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates are 3% on the first \$5,000 of taxable income; 4% on the next \$5,000 of taxable income; and 5% on all taxable income in excess of \$10,000 (Miss. Code Ann. §27-7-5).

MISSOURI Income Tax

Kathleen R. Sherby, St. Louis
February 15, 2001

A. Numbered footnotes from chart —

1. The Missouri taxable income of a nonresident trust is that share of the trust's federal distributable net income derived from Missouri sources, subject to certain modifications (Mo. Rev. Stat. §§143.381, 143.391). Missouri source income is defined in Missouri Revised Statutes section 143.181.2 as that attributable to (1) real or tangible personal property located in Missouri or (2) a business, trade, profession or occupation carried on in Missouri.

2. A resident trust is (1) a testamentary trust created by a decedent who was domiciled in Missouri at death or an inter vivos trust created by a person who was domiciled in the state on the date the trust became irrevocable and (2) that has at least one income beneficiary who, on the last day of the year, was a resident of Missouri (Mo. Rev. Stat. §143.331). A nonresident trust is one which does not fall within the definition of §143.331 above (Mo. Rev. Stat. §143.371). Resident trusts are fully taxable under Missouri law (Mo. Rev. Stat. §143.341). A nonresident trust is taxable only on Missouri source income.
3. If a resident trust is required to file a federal income tax return, it is required to file a Missouri income tax return even if no tax is due. A nonresident trust with Missouri source gross income in excess of \$600 is required to file a return regardless of the amount of taxable income (Mo. Rev. Stat. §143.481). If no federal income tax return is due for a resident trust because the trust receives only tax exempt interest, no Missouri return is due even though the tax exempt interest is otherwise not exempt in Missouri (Mo. Rev. Stat. §143.481).
4. Missouri's income begins with federal taxable income after subtraction of the federal distribution deduction (Mo. Rev. Stat. §143.341).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal Taxable Income (TI) as adjusted.
2. A resident trust is (1) a testamentary trust created by a decedent who was domiciled in Missouri at death or an inter vivos trust created by a person who was domiciled in the state on the date the trust became irrevocable , and (2) that has at least one income beneficiary who, on the last day of the taxable year, is a resident of Missouri. (Mo. Rev. Stat. §143.331). A nonresident trust is one which does not fall within the definition of §143.331 (Mo. Rev. Stat. §143.371). Resident trusts are fully taxable under Missouri law (Mo. Rev. Stat. §143.341). Missouri adjusted gross income is federal adjusted gross income with certain modifications (Mo. Rev. Stat. §143.121). The adjusted gross income of a nonresident trust is that part of the trust's federal adjusted gross income, subject to certain modifications, derived from Missouri sources (Mo. Rev. Stat. §143.181).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for any income tax imposed by another state, political subdivision or the District of Columbia on income earned in the home jurisdiction which is taxable in Missouri [Mo. Rev. Stat. §143.081].

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 1.5% for income up to \$1,000 to \$315 plus 6% of income in excess of \$9,000 (Mo. Rev. Stat. §143.011).

MONTANA Income Tax

Harry A. Haines, Missoula

February 26, 2001

A. Numbered footnotes from chart —

1. Montana income tax statutory and regulatory authority is extremely limited. There are no established situs rules relating to trusts in Montana other than "source of income" rules (See Mont. Code Ann. §15-30-105).
2. Although Montana allows a distribution deduction pursuant to Mont. Code Ann. §15-30-136(3)(a), it does not use the concept of DNI to either limit the deduction or to preserve the characteristics of income or expense.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Montana imposes a tax on the net income of resident trusts and on the income from property or from a business, trade, profession or occupation carried on in Montana of nonresident trusts (Mont. Code Ann. §§15-30-101, 15-30-105). Trusts are taxed on the net income received during the taxable year and accumulated or held for future distribution (Mont. Code Ann. §15-30-135). Gross income for Montana income tax purposes is defined to include dividends, interest, partnership income, rents and royalties, gains from the sale or exchange of property, etc. (Mont. Code Ann. §15-30-136).
2. Credits allowed (to a typical trust): A credit is allowed resident trusts for taxes paid to another state on income from sources in that state, provided the other state does allow a credit to Montana residents against the tax imposed by the other state on income from sources in Montana, and provided the credit does not exceed the proportionate part of the Montana tax (Mont. Code Ann. §15-30-124).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 2% on income up to \$1,000 to 11% for income over \$35,000 [the bracket amounts are adjusted each year by an inflation factor] (Mont. Code Ann. §15-30-103).

NEBRASKA Income Tax

James E. Rembolt, Lincoln
February 16, 2001

A. Numbered footnotes from chart —

1. Neb. Rev. Stat. §§77-2717;77-2724; 77-2761.
2. Neb. Rev. Stat. §§77-2714.01(6); 77-2717(1).
3. Every fiduciary of a resident estate or trust must file a Nebraska fiduciary income tax return, Form 1041N, if the estate or trust is required to file a federal income tax return for the taxable year, except for a “simple trust”, if all the trust’s beneficiaries are residents of the state of Nebraska, all of the trust’s income is derived from sources in Nebraska, the trust has no federal taxable income and the trust is not an electing small business trust [2000 Nebraska Fiduciary Income Tax Return, Form 1041N, Instructions page 2, and Neb. Rev. Stat. §77-2717(2); Neb. Admin. R. & Regs. §23-006].
4. Nebraska AMT is 29.6% of Federal AMT. [2000 Nebraska Fiduciary Income Tax Instructions, page 5].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal Taxable Income (TI) as adjusted.
2. Nebraska imposes a tax on the income of a resident trust. The residence of a trust is the same as the domicile of the creator if the trust is created at death or at the time the trust became irrevocable (Neb. Admin. R. & Regs. §23-001). The Nebraska source income of a nonresident trust is subject to tax (Neb. Rev. Stat. §77-2724).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for taxes paid to another state or political subdivision (Neb. Rev. Stat. §77-2730, Neb. Admin. R. & Regs. §23-008.001). The maximum credit allowed for taxes paid to another state is the lesser of the computed tax credit or the actual tax paid, not to exceed the Nebraska income tax. The computed tax credit is calculated by dividing the taxable income from the other state by the Nebraska adjusted federal taxable income of the trustee, and by multiplying the quotient by the Nebraska income tax (Neb. Admin. R. & Regs. §23-008.01A). Any trust may take a credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Neb. Rev. Stat. §77-2715.07(2)(b).

C. Rate for this tax as it applies to the net taxable amount of a trust —

For taxable year 2000, rates ranged from 2.51% on income up to \$500 to a tax of \$682.68 plus 6.68% on income over \$15,150 (Neb. Rev. Stat. §77-2715.02).

NEVADA Income Tax

Prince A. Hawkins, Reno
February 15, 2001

Nevada has no income tax and has a constitutional prohibition against a personal income tax (Constitution of the State of Nevada, Article 10, Section 1, Subsection 9).

NEW HAMPSHIRE Income Tax

Ruth Ansell, Bedford
February 21, 2001

New Hampshire has no individual or trust income (or similar) tax.

NEW HAMPSHIRE Intangibles Tax

Ruth Ansell, Bedford
February 21, 2001

A. Numbered footnotes from chart —

1. The income received by estates held by trustees, any one of whom is an inhabitant of New Hampshire, or has derived his appointment from a New Hampshire court, shall be subject to tax (except that income received by estates held by trustees treated as “grantor trusts” under IRC §671 *et seq.* shall be included in the return of their owners) to the extent that the persons to whom the income from the trust is payable, or for whose benefit it is accumulated, are inhabitants of New Hampshire [N.H. Rev. Stat. Ann. §77:10].
2. If a New Hampshire beneficiary receives income from one or more trustees, none of whom are inhabitants of the state (or have been appointed by a New Hampshire court) the beneficiary is taxed on the income received [N.H. Rev. Stat. Ann. §77:12].

3. N.H. Stat. Ann. §77:7 provides that distributions of capital are not taxable as income but that accumulated profits shall not be treated as capital.
4. The Interest and Dividend Tax imposes a tax on interest and dividend income [N.H. Rev. Stat. Ann. §77:3]. The Business Profits Tax imposes a tax on net business profits and net gain in the sale of business assets [N.H. Rev. Stat. §77-A:1 III(e)]. Examples where there is no tax due, yet a return must be filed because of the Interest and Dividends Tax: (i) interest and/or dividend income exceeds \$2,400 from all sources, all interest received from New Hampshire municipal bonds; (ii) interest and/or dividend income exceeds \$2,400, all income distributed to nonresident beneficiaries. Examples where there is no tax due, yet return must be filed because of the Business Profits Tax: (i) “gross business income” in excess of \$50,000, net income is a loss; (ii) “gross proceeds” from the sale of business assets are more than \$50,000, net gain is zero.
5. The Business Enterprise Tax imposes a tax of 1/2 of one percent of the taxable enterprise value tax base of every business enterprise. [N.H. Rev. Stat. Sec. 77-E:2.] Every business enterprise having gross receipts in excess of \$100,000 or an enterprise value tax base greater than \$50,000 must file a return. [N.H. Rev. Stat. Sec. 77-E:5.]

B. Summary description of tax computation components —

1. New Hampshire imposes a tax on interest and dividends at the rate of 5% [N.H. Rev. Stat. Ann. §77:1]. “Interest and dividends” are defined under law [N.H. Rev. Stat. Ann. §77:4]. The income received by trustees, any one of whom is a resident of New Hampshire, or has derived his or her appointment from a court of the State, shall be subject to the tax (except for “grantor trusts” under IRC §671 *et seq.*) to the extent that the persons to whom the income from the trust is payable, or for whose benefit it is accumulated, are residents of the state [N.H. Rev. Stat. Ann. §77:10]. However, the gross interest and/or dividend income must exceed \$2,400 per year [N.H. Rev. Stat. Ann. §77:3].
2. In addition, a trust may be subject to a 8% New Hampshire Business Profits Tax on profits from carrying on any business activity in New Hampshire [N.H. Rev. Stat. Ann. §§77-A:1, 77-A:2]. Gross business income means all income for federal income tax purposes derived in the conduct of a business activity, including but not limited to, gross proceeds realized from trading in stock, bonds or other evidences of indebtedness, gross proceeds realized from the sale of assets used in trade or business, gross rents, royalties, fees, commissions, dividends, without deduction on account of cost of property sold, cost of materials used, labor cost, or any other expenses paid or accrued and without deduction on account of losses [N.H. Rev. Stat. Ann. §77-A:1 VI]. However, the gross business income must exceed \$50,000 per year in order to file a return. [N.H. Rev. Stat. Sec. 77-A:6 I.]
3. Credits allowed (to a typical trust): A credit for Business Enterprise Tax paid under RSA 77-E will be allowed as a credit for Business Profits Tax paid under RSA 77-A:5 X.

NEW JERSEY Income Tax

Richard Kahn, Morristown
February 19, 2001

A. Numbered footnotes from chart —

1. New Jersey taxes nonresident trusts on income derived from sources within this State (N.J.S.A. §54A:5-8).
2. New Jersey taxes “resident estates and trusts.” A resident estate is defined to be the estate of a decedent domiciled in New Jersey at death. A resident testamentary trust is defined as a trust of property transferred by will of a decedent domiciled in New Jersey at death. A resident non-testamentary trust is defined as a trust that became irrevocable at the time when the transferor was domiciled in New Jersey. See N.J.S.A. 54A:1-2(o). Residency of the trustee, situs of the administration of the trust, or the residency of the beneficiaries is not relevant under the statute. However, those factors may result in such insufficient continuing contact with New Jersey to cause the trust to become no longer subject to tax. See *Potter v. Taxation Div. Director*, 5 N.J. Tax 399 (1983); *Pennoyer v. Taxation Div. Director*, 5 N.J. Tax 386 (1983).
3. Generally, charitable trusts are not subject to tax in New Jersey and are not required to file a New Jersey income tax return (N.J.S.A. §54A:2-1). However, a charitable trust is not specifically defined under New Jersey law. It is unclear whether certain split interest trusts (*e.g.*, charitable lead trusts and charitable remainder trusts) would be treated as charitable trusts for purposes of determining their filing requirements. The State of New Jersey asserts that split interest charitable trusts are not charitable trusts. See *Burke v. Director*, 11 N.J. Tax 29 (1990).
4. No limitation on the distributions deduction exists which is similar to the “distributable net income” concept under federal law. The taxable income of the trust equals the income which has not been or is currently not required to be distributed to its beneficiaries (N.J.S.A. §54A:5-3).
5. Gross income does not include interest or gains on (i) obligations issued by or on behalf of New Jersey or any New Jersey county, municipality, or other district, (ii) U.S. Treasury obligations, (iii) bonds issued by Puerto Rico and the Virgin Islands. This list does not include all federally tax-exempt securities. There are numerous other exclusions. The tax is on gross income. There are no deductions of any significance, other than for distributions. There is a \$1,000 personal exemption. See footnote 3 regarding charitable trusts.

B. Summary description of tax computation components —

1. Taxable gross income for New Jersey purposes is specifically defined (N.J.S.A. §54A:5-1). There are numerous exclusions.
2. New Jersey imposes a tax on the income of every resident trust realizing gross income of more than \$10,000 during the taxable year and on the New Jersey source income of nonresident trusts (N.J.S.A. §§54A:2-1, 54A:8-3.1, 54A:5-8). The tax is payable by the trustee to the extent of taxable income not distributed or credited to a beneficiary (N.J.S.A. §54A:5-3). Under N.J.S.A. §54A:1-2, a resident trust means a trust consisting of the property of a person domiciled in New Jersey at the time the trust became irrevocable or at the person's death if the trust was created at death. See footnote A2 above.
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes paid to another state, political subdivision or the District of Columbia on income subject to New Jersey tax (N.J.S.A. §54A:4-1). New Jersey trusts may take a credit against New Jersey income tax liability for income from sources outside of the state that is subject to both New Jersey income tax and income tax imposed by another jurisdiction. The credit for taxes paid to other jurisdictions is computed as follows:
 - (a) Determine the amount of income received during the year that is subject to tax by another jurisdiction. A trust may not combine the same income subject to tax by more than one jurisdiction;
 - (b) Determine the amount of income taxed by New Jersey;
 - (c) Multiply the fraction (the numerator of which is income subject to tax by other jurisdictions and denominator of which is income subject to tax in New Jersey) by the New Jersey tax;
 - (d) Determine the lesser of the income tax paid to the other jurisdictions or the credit computed in (c); and
 - (e) Subtract this amount (the credit) from the New Jersey tax liability (N.J.S.A. §54A:4-1). No credit shall be allowed against tax due for the amount of any income tax imposed on S Corporation income allocated to New Jersey or for any taxes imposed on or paid on behalf of a person other than the taxpayer [N.J.S.A. §54A:4-1(c)(2)(4)].

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 1.4% on income up to \$20,000 to \$2,651.25 plus 6.370% on income in excess of \$75,000 [N.J.S.A. §54A:2-1(b)(4)].

NEW MEXICO Income Tax

Robert P. Worcester, Santa Fe
February 20, 2001

A. Numbered footnotes from chart —

1. N.M. Stat. Ann. §7-2-3.
2. N.M. Stat. Ann. §7-2-2(I) and (S). N.M.S.A. 1978, §7-2-2(I) and (R) and Fiduciary Income Tax Instructions.
3. No specific regulation addresses this issue and the conclusion that the tax would be applied on a pro rata portion is based on informal discussions with state tax officials.
4. Fiduciary Income Tax Instructions.
5. The requirement to file is predicated on the requirement to file Federal Form 1041. There may be situations where a return is required even though no tax is due, such as a trust that has a beneficiary who is a nonresident alien.
6. See N.M. Stat. Ann. §§7-2-2(B),(N), 7-2-3.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): New Mexico imposes a tax on the federal taxable income (TI) of trusts adjusted for state purposes and to exclude amounts that the state is prohibited from taxing because of the law or Constitution of New Mexico or the United States [N.M. Stat. Ann. §7-2-2].
2. Credits allowed (to a typical trust): Credit is allowed to resident trust for income tax paid to other states on income earned outside of New Mexico, provided the credit does not exceed 5.5% of income on which the tax payable to the other estate was determined [N.M. Stat. Ann. §7-2-13].

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 1.7% on income up to \$5,500 to \$4,057.50 plus 8.2% of income in excess of \$65,000 [N.M. Stat. Ann. §7-2-7].

A. Numbered footnotes from chart —

1. N.Y. Tax §633.
2. A trust is a New York resident trust to the extent it consists of property transferred (i) by will of a decedent who was domiciled in New York at his or her death, (ii) to an irrevocable *inter vivos* trust by a person domiciled in New York at the time of the transfer, or (iii) to a revocable *inter vivos* trust that later becomes irrevocable by a person who was a New York domiciliary at the time the trust became irrevocable (N.Y. Tax §605). Generally, a New York resident trust is subject to New York state income tax on all of its income, regardless of its source (N.Y. Tax §618). There is an important exception to this general rule. Regulation 20 N.Y.C.R.R. §105.23(c) provides that no New York state personal income tax may be imposed on a resident trust if all of the following conditions are met:
 - (1) all of the trustees are domiciled in a state other than New York state;
 - (2) the entire corpus of the trust, including real and tangible property, is located outside of New York state; and
 - (3) all income and gains of the trust are derived or connected from sources outside of New York state, determined as if the trust were a nonresident. [See *Mercantile-Safe Deposit and Trust Co. v. Murphy*, 243 N.Y.S.2d 26, 19 A.D.2d 765 (1964)].
3. See *Mercantile-Safe Deposit and Trust Co.*, *supra*.
4. A return is required for every resident trust that is required to file a federal income tax return if it has any New York taxable income, had any tax preference items for minimum income tax purposes in excess of the specific deduction, or is subject to a separate tax or lump sum distributions (N.Y. Tax §5651). If, however, the requirements of 20 N.Y.C.R.R. Section 105.23(c) (described above) are met, no return is required. (TSB-M-96(1)).
5. In addition to state income taxes, city income taxes imposed by New York City and Yonkers should also be taken into account.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): New York taxable income is federal taxable income with certain modifications (N.Y. Tax §618). Trusts must add or subtract their share in the New York fiduciary adjustment (N.Y. Tax §619).
2. New York imposes an income tax on the taxable income of resident trusts and upon the income from New York sources of nonresident trusts (N.Y. Tax §601). A resident trust is a trust consisting of property transferred (i) by the will of a decedent who was domiciled in New York at his or her death, (ii) to an irrevocable *inter vivos* trust by a person domiciled in New York at the time of the transfer, or (iii) to a revocable *inter vivos* trust that later became irrevocable by a person domiciled in New York at the time the trust became irrevocable (N.Y. Tax §605). Generally, a New York resident trust is subject to New York state income tax on all of its income, regardless of its source (N.Y. Tax §618). However, no tax may be imposed on a resident trust if all of the following conditions are met:
 - (1) all of the trustees are domiciled in a state other than New York;
 - (2) the entire corpus of the trust, including real and tangible property, is located outside of New York; and
 - (3) all income and gains of the trust are derived or connected from sources outside of New York, determined as if the trust were a nonresident [Reg. 20 N.Y.C.R.R. §105.23; see *Mercantile-Safe Deposit and Trust Co.*, *supra*].
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for any other state, local or Canadian provincial tax imposed (N.Y. Tax §620).

C. Rate for this tax as it applies to the net taxable amount of a trust —

For taxable years beginning after 1996, the rates range from 4% on income not over \$8,000 to \$973 plus 6.85% over \$20,000 (N.Y. Tax §601). In addition to the personal income tax, trusts are subject to a 6% tax on minimum taxable income which is the sum of tax preference items with certain modifications (N.Y. Tax §§602, 622, 636).

A. Numbered footnotes from chart —

1. N.C. Gen. Stat. §105-160.2. A new Income Tax Act for Estates and Trusts, sections 105-160, *et seq.* of the North Carolina General Statutes, was ratified by the General Assembly on August 7, 1989. The Act is effec-

tive for tax years beginning on or after January 1, 1989. There is no commentary or case law on the statute. The taxable income of a trust under the new Act is subject to certain adjustments applicable to S corporations and to taxpayers in general, except that the adjustments are apportioned between the trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed at prescribed percentages of an amount equal to the taxable income multiplied by a fraction, the numerator of which is the trust's gross income from North Carolina sources, plus the gross income from sources outside of the state and from intangible sources which is for the benefit of a resident of the state, and the denominator of which is the trust's gross income (N.C. Gen. Stat. §105-160).

2. Although there is no current authority, if the remainderman's interest is not vested or contingent, there should be no tax. However, if the interest is vested subject to divestment, the beneficiary would be treated as having a vested interest until the divestment occurs.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted (N.C. Gen. Stat. 105-160.2).
2. The taxable income of a trust is the same as taxable income under federal law with North Carolina adjustments required under the North Carolina individual income tax provisions, except that the adjustments are apportioned between the trust and the beneficiaries based on distributions made during the taxable year (N.C. Gen. Stat. §105-160.2).
3. The trust's taxable income is determined by multiplying the trust's North Carolina source income by a fraction the numerator of which is North Carolina source income plus gross income from sources out of state and from intangible sources for the benefit of a North Carolina resident, and the denominator of which is the trust's federal gross income (N.C. Gen. Stat. §105-160.2).
4. Credits allowed (to a typical trust): A trustee is allowed a credit for income taxes paid to another state or country on income derived from sources within the other state or country. The fraction of North Carolina income which has an out of state source is determined and the North Carolina income tax is multiplied by that fraction to determine the credit, provided that credit can be no greater than the tax paid to the other state or country on the out of state income (N.C. Gen. Stat. §105-160.4).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 6% on taxable income up to \$12,750, 7% up to \$60,000, and 7.75% on amounts in excess of \$60,000. (N.C. Gen. Stat. §105-160.2)

NORTH CAROLINA Intangibles Tax

James W. Narron, Smithfield
March 7, 2001

Effective January 1, 1995, the North Carolina intangible personal property tax was repealed.

NORTH DAKOTA Income Tax

Robert E. Rosenvold, West Fargo
February 26, 2001

A. Numbered footnotes from chart —

1. N.D. Cent. Code 57-38-30.1(1).
2. If the only contact with the state is that one or more beneficiaries or one or more trustees reside in the state, Rule 81-03-02.1-04 of the North Dakota Administrative Code requires the filing of a return, but no tax would be due from the trust.
3. In the case of a nonresident trust, the distribution deduction is allowed only if the income distributed is from North Dakota sources.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. Federal taxable income is the starting point for computing the North Dakota income tax with certain modifications (N.D. Cent. Code §§57-38-01, 57-38-01.2). The tax is imposed on the taxable income of residents and on the taxable income of nonresidents from property owned or a business, trade, profession or occupation carried on in North Dakota (N.D. Cent. Code §§57-38-02, 57-38-03).
3. Credits allowed (to a typical trust): Credits are allowed for contributions made to certain non-profit private

institutions of higher education; certain non-profit private institutions of secondary education located in the State of North Dakota, for the cost of geothermal solar or wind energy devices installed in a building or on property owned by the taxpayer in North Dakota, and for payment of wages to developmentally disabled or chronic mentally ill persons employed in North Dakota. In addition, there is a deduction available to non-resident trusts from non-North Dakota adjusted gross income. This has the effect of taxing only North Dakota income for North Dakota income tax purposes.

C. Rate for this tax as it applies to the net taxable amount of a trust —

The rates range from 2.67% on taxable income up to \$3,000, to 12% on income over \$50,000 (N.D. Cent Code §57-38-29). Trusts are allowed an optional method of computing the tax. The optional tax is 14% of the trust's adjusted federal income tax [N.D. Cent. Code §57-38-30.3(2)].

OHIO Income Tax

Robert M. Brucken, Cleveland

February 20, 2001

A. Numbered footnotes from chart —

1. Ohio does not impose an income tax on trusts. It does impose an income tax on individuals (including trust beneficiaries) and on estates (Ohio Rev. Code Ann. §§5747.01-5747.02). Accumulated trust income is not taxed to the trust, but it is taxed to the beneficiaries when it is later paid out to them under a throwback arrangement similar to the federal throwback rule (Ohio Rev. Code Ann. §§5747.01-5747.02).

B. Summary description of tax computation components —

Trusts are not subject to the Ohio income tax, although an estate is subject to tax (Ohio Rev. Code Ann. §§5747.01-5747.02).

OKLAHOMA Income Tax

Cynda C. Ottaway, Oklahoma City

March 1, 2001

A. Numbered footnotes from chart —

1. A nonresident trust is taxed only on adjusted gross income from Oklahoma sources. (Okla. Stat. Ann. title 68, §2362.)
2. Under Oklahoma law, a "resident trust" includes: (a) any testamentary trust created by a decedent domiciled in Oklahoma at death; (b) a revocable trust consisting of property of a person domiciled in Oklahoma, and (c) an irrevocable trust consisting of property of a person domiciled in Oklahoma either at the time the property was transferred to the trust or at the time the trust became irrevocable [Okla. Stat. Ann. title 68, §2353(6)]. Every resident trust is required to file an Oklahoma return stating all taxable income with adjustments to arrive at Oklahoma income.
3. The Oklahoma Tax Commission provides in its regulations that domicile is the primary factor in determining residency of a trust. The regulations also state that a testamentary trust created by the will of a resident decedent is a resident decedent is a resident trust until distributed. The regulations further state that residency of an *inter vivos* trust "depends on the trust language" which leaves open to interpretation whether the residency of an *inter vivos* trust might change. Regulation 710: 50-23-1(c).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Approximately federal taxable income (TI)—all federal amounts are separately itemized as they relate to Oklahoma.
2. The Oklahoma taxable income or loss of a trust is the same portion of that reported for federal income tax purposes as the Oklahoma income, gains, and losses determined under the Oklahoma income tax law for the trust bears to the federal income, gains, losses and deductions (Okla. Stat. Ann. title 68, §2364).
3. Credits allowed (to a typical trust): No credits are allowed at the trust level to a trust for income tax paid to another state.

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 1/2% for taxable income up to \$1,000 to 6.75% on amounts over \$10,000; provided, however, the Board of Equalization may adjust to 7% on amounts over \$10,000.

OREGON Income Tax

John H. Rosenfeld, Portland
February 27, 2001

A. Numbered footnotes from chart —

1. See Or. Rev. Stat. §§316.117; 316.307(1)(1999).
2. A “resident trust” means a trust of which the fiduciary is a resident of Oregon, or a trust the administration of which is carried on in Oregon. In the case of a corporate fiduciary engaged in interstate trust administration, the residence and place of administration of a trust both refer to the place where a majority of fiduciary decisions are made in administering the trust. [Or. Rev. Stat. §316.282(1)].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. The taxable income of Oregon taxpayers is federal taxable income subject to certain adjustments (Or. Rev. Stat. §§316.048, 316.680). The Oregon income tax is imposed on all of the income of every Oregon resident and on a prorated amount of the income of every nonresident (Or. Rev. Stat. §316.037).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes paid to other states or to the District of Columbia on income subject to the Oregon tax (Or. Rev. Stat. §316.292).

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 5% of taxable income up to \$2,450 to \$378 plus 9% of income over \$6,100 (Or. Rev. Stat. §316037).

PENNSYLVANIA Income Tax

K. Sidney Neuman, Pittsburgh
February 28, 2001

A. Numbered footnotes from chart —

1. Pennsylvania must answer “yes” and “no.” It is “yes” as to the settlor but it is “no” as to a beneficiary under IRC §678(a) who is treated as the owner for federal income tax purposes. See Reg. §105.1.
2. Pennsylvania requires a return for each resident trust having any income and all nonresident trusts having any Pennsylvania source income.
3. For Pennsylvania purposes estates or trusts must report taxable income, or loss, realized from the six following classes: (1) PA taxable interest; (2) PA taxable dividends; (3) Net income or loss from the operation of a business, profession or farm; (4) Net gain or loss from the sale, exchange, or disposition of property; (5) Net income or loss from rents, royalties, patents, or copyrights; (6) Estate or trust income.
4. Until recently, Pennsylvania had an enabling act which allowed certain counties to impose a personal property tax of 4 mills on corporate securities issued by non-Pennsylvania companies that are not registered to do business in Pennsylvania. The constitutionality of the tax was challenged. See *Walter H. and Lenore Annenberg v. Commonwealth, et al.*, Pennsylvania Supreme Court, 4/7/98. The Supreme Court determined that the personal property tax discriminates against interstate commerce and was remanded to the Montgomery County Court of Common Pleas to determine whether the Commonwealth of Pennsylvania has sustained the burden under *Fulton Corp. v. Faulkner*, 516 U.S. 325 (1996), of proving that the personal property tax is a compensating tax designed to simply make interstate commerce bear a burden already borne by intrastate commerce. After remand to the Court of Common Pleas of Montgomery County, the Supreme Court held that the stock clause (taxing foreign corporations which do not do business in Pennsylvania) was not a compensatory tax and therefore, unconstitutional. See *Walter H. and Lenore Annenberg v. Commonwealth, et al.*, 562 Pa. 581, 757 A.2d 338 (June 1, 2000).

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): An income tax is imposed on resident trusts on the receipt of specified classes of taxable income (72 Pa. Cons. Stat. Ann. §7302). The tax on nonresident trusts applies to only such income received from Pennsylvania sources (72 Pa. Cons. Stat. Ann. §7302).
2. Taxable income for Pennsylvania purposes is defined to include all forms of compensation, net profits from the operation of a business, profession or other activity, net gains or income from the disposition of property, income derived from rents, royalties, patents and copyrights, dividends, interest, gambling and lottery winnings (other than from the Pennsylvania lottery) and net gains or income derived through estates or trusts (72 Pa. Cons. Stat. Ann. §§7301, 7303).

3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes paid to another state with respect to income which is also the subject of Pennsylvania income tax, [72 Pa. Cons Stat. Ann. §7314(a)]. The credit may not exceed the proportion of Pennsylvania tax due that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire taxable income [72 Pa. Cons. Stat. Ann. §7314(b)].

C. Rate for this tax as it applies to the net taxable amount of a trust (resident and nonresident)—

The rate of tax imposed is 2.8%. A temporary assessment of 0.3% was imposed for the second half of tax year 1991 and the first half of tax year 1992 (72 Pa. Cons. Stat. Ann. §7302).

RHODE ISLAND Income Tax

Noel M. Field, Jr., Providence

February 20, 2001

A. Numbered footnotes from chart —

1. R.I. Gen. Laws §§44-30-35, 44-30-36.
2. R.I. Gen. Laws §44-30-5(c) is interpreted so that an irrevocable trust established by a Rhode Island resident or by the will of a Rhode Island resident, is treated as a resident trust in the same proportion that the Rhode Island resident potential beneficiaries bear to the total potential beneficiaries.
Example: Trust pays out all its income but incurs capital gains during the year. The trust will presumably be distributed in equal shares per capita to the settlor's grandchildren, four of whom live outside Rhode Island and three of whom live within the state. Three-sevenths (3/7) of the gain will be taxed on the Rhode Island return. The income is not taxed to the trust because of the distributions deduction. The Rhode Island tax is a piggy-back tax. If the trust is a resident trust, the Rhode Island tax is a designated percentage of the federal tax.
3. If trust has R.I. source income (e.g. real estate sale) even though no tax payable.
4. R.I. Gen. Laws §44-30-16.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. The federal taxable income, with certain modifications, is the starting point for computing Rhode Island income tax (R.I. Gen. Laws §44-30-12). The Rhode Island income of a resident trust is its federal income modified by the adjustment required in apportioning additions and subtractions to federal taxable income between the trust and its beneficiaries (R.I. Gen. Laws §§44-30-16, 44-30-17). The Rhode Island income of a nonresident trust is limited to Rhode Island source income (R.I. Gen. Laws §44-30-35).
3. Credits allowed (to a typical trust): Residents are allowed a credit for income taxes paid to another state if the taxes are imposed irrespective of the residence/domicile of the taxpayer (R.I. Gen. Laws §40-30-18).

C. Rate for this tax as it applies to the net taxable amount of a trust —

The tax imposed by Rhode Island is at the rate of 25.5% of federal income tax liability (R.I. Gen. Laws §44-30-2) for 2001.

SOUTH CAROLINA Income Tax

John R. Thomas, Greenville

February 21, 2001

A. Numbered footnotes from chart —

1. S.C. Code Ann. §12-6-1720. S.C. Code Ann. Code §12-8-570 requires the fiduciary to withhold 7% of any distribution of South Carolina taxable income to a nonresident beneficiary. The amounts withheld are to be remitted to the South Carolina Department of Revenue with the annual tax return of the trust. The 7% withholding is not a tax upon the trust itself, but rather upon the income of the nonresident beneficiary. The purpose of this withholding is to preserve South Carolina's jurisdiction over income subject to South Carolina income tax, but distributed to a resident of a foreign state [*Peoples Nat'l Bank v. South Carolina Tax Comm.*, 250 SC 187, 156 S.E.2d 769 (1967)]. The nonresident beneficiary may claim the amount withheld as a credit against any South Carolina income tax liability and will receive a refund for any excess.
2. S.C. Code Ann. §12-6-30(5).
3. S.C. Code Ann. §12-6-4910(6) requires "a trust with a nonresident beneficiary" to file a South Carolina income tax return. This requirement exists as a regulatory measure regardless of whether any income is due South Carolina (*Peoples Nat'l Bank v. South Carolina Tax Comm.*, *supra*).

4. Effective for tax years beginning after December 31, 2000, if a capital asset is held for one year, forty-four percent (44%) of the net capital gain on sale is allowed as a deduction (S.C. Code Ann. §12-6-1150). The non-resident beneficiary may file an affidavit (Form I-41) agreeing to file South Carolina income tax returns to avoid 7% withholding.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal Taxable Income (TI) as adjusted.
2. The South Carolina taxable income of a trust is the trust's federal taxable income with modifications (S.C. Code Ann. §12-6-610).
3. Credits allowed (to a typical trust): Residents are allowed a credit for income taxes paid to another state on out of state source income taxable in South Carolina (S.C. Code Ann. §12-6-3400).

C. Rate for this tax as it applies to the net taxable amount of a trust —

For 2000, the rate of tax ranges from 2.5% for income up to \$2,360 to 7% on income in excess of \$11,800 less \$342. The rate of tax is adjusted annually for inflation (S.C. Code Ann. §§12-6-510, 12-6-520).

SOUTH DAKOTA Income Tax

P. Daniel Donohue, Sioux Falls

February 13, 2001

South Dakota does not impose an income tax.

TENNESSEE Income Tax

Dan W. Holbrook, Knoxville

February 16, 2001

A. Numbered footnotes from chart —

1. No case law, but tax on income received by fiduciaries presumably excludes revocable trust.
2. Tax is on income received by a fiduciary "for the benefit of" resident beneficiaries. No case law defines "for the benefit of."
3. No distribution deduction except for charitable distributions or set-asides [Tenn. Code Ann. §67-2-104(n)].

B. Summary description of tax computation components —

1. A tax is imposed on certain kinds of dividends and interest received by fiduciaries "for the benefit of" resident beneficiaries [Tenn. Code Ann. §67-2-110(a)], at the rate of 6% [Tenn. Code Ann. §67-2-102]. There is an exemption of \$1,250 [Tenn. Code Ann. §67-2-104(a)]. The trustee pays the tax even if all of the income is distributed [Tenn. Code Ann. §67-2-110(a)]. However, resident trustees receiving income "on behalf of" nonresident beneficiaries are not required to pay tax on that portion of the income [Tenn. Code Ann. §67-2-110(b)].
2. Credits allowed (to a typical trust): No credit is given for taxes paid to another state. Trust income paid to or irrevocably set aside for charity is exempt [Tenn. Code Ann. §67-2-104(n)].

TEXAS Income Tax

Alvin J. Golden, Austin

February 2, 2001

Texas does not impose an income tax.

UTAH Income Tax

Charles M. Bennett, Salt Lake City

February 21, 2001

A. Numbered footnotes from chart —

1. Utah Code Ann. §59-10-204.
2. Under Utah law a "resident trust" is required to pay income taxes on the total trust income (Utah Code Ann. §§59-10-201, §59-10-104). A "resident trust" includes a trust whose only contact with Utah was that property of a decedent domiciled in Utah at the decedent's death was transferred to the trust by the decedent's will. In

that circumstance, the trust would be subject to Utah taxation although it had no other contact with the state [Utah Code Ann. §59-10-03 (1)(k)(i)(B)]. There is no case law interpreting the constitutionality of this provision or any other provision relating to the other answers to this study.

3. The trust is fully taxable if the place of administration is Utah [Utah Code Ann. §59-10-103(1)(k)(i)(C)]. If there are two or more trustees, one of whom is a Utah corporate or professional trustee, the place of administration is Utah [Utah Code Ann. §59-10-103(1)(k)(iii)]. The statute is silent where there are two or more fiduciaries, none of whom is a corporate or professional trustee. In that circumstance, presumably Utah will be the place of administration only if the major portion of the administration is conducted in Utah [Utah Code Ann. §§59-10-103(1)(k), 59-10-201].
4. Utah taxes a nonresident trust on its Utah source income [Utah Code Ann. §59-10-204 and §59-10-205].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. Utah taxable income for a resident trust is its federal taxable income with certain modifications (Utah Code Ann. §§59-10-209, 59-10-202, 59-10-201.1).
3. Credits allowed (to a typical trust): Residents are allowed a credit for taxes paid to another state or federal possession on income derived from out of state sources which is also subject to the Utah tax (Utah Code Ann. §§59-10-106, 59-10-201).

C. Rate for this tax as it applies to the net taxable amount of a trust —

The rate of tax ranges from 2.55% on income up to \$750 to \$165.50 plus 7.2% on amounts in excess of \$3,750 (Utah Code Ann. §§59-10-104, 59-10-201).

VERMONT Income Tax

Thomas M. Dowling, Rutland

February 15, 2001

A. Numbered footnotes from chart —

1. Vt. Stat. Ann. title 32 §§5822, 5823.
2. A resident trust is one consisting of property transferred by a decedent who was domiciled in Vermont at death; or consisting of property transferred by a domiciliary to a then irrevocable trust; or, in the case of a revocable trust, transferred by a person who was a domiciliary at the time the revocable trust became irrevocable [Vt. Stat. Ann. title 32 §5811(11)(B)].
3. Under Vt. Stat. Ann. title 32 §5861(a), a Vermont return must be filed if the trust is required to file a federal income tax return for the year and the trust earned or received more than \$100 of Vermont income or had a tax liability under Vermont law for that year.
4. The state tax being a percentage of the Federal income tax liability, which represents both ordinary and capital gains income, the effective rate applicable to capital gains will reflect the difference in the Federal tax applicable to those two kinds of income.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. Vermont adjusted gross income is federal adjusted gross income with certain modifications (Vt. Stat. Ann. title 32 §§5811, 5823).
3. Credits allowed (to a typical trust): Residents are allowed a credit for income taxes paid to another state on out-of-state source income, but not in excess of the portion of Vermont tax attributable to the adjusted gross income received from sources within such other state (Vt. Stat. Ann. title 32 §5825).

C. Rate for this tax as it applies to the net taxable amount of a trust —

A tax is imposed on the Vermont income of a resident trust equal to 24% of the trust's federal income tax liability reduced by a percentage equal to the percentage of the trust's adjusted gross income which is not Vermont source income (Vt. Stat. Ann. title 32 §5822).

A. Numbered footnotes from chart —

1. Va. Code Ann. §58.1-362.
2. The answer is unclear. Virginia taxes all trusts which are required to file a federal fiduciary income tax return. Trusts are classified as resident or nonresident. Virginia defines a Virginia resident trust as: a trust created by will of a decedent who at his death was domiciled in Virginia; a trust created by, or consisting of property of a person domiciled in Virginia; or a trust which is being administered in Virginia (Va. Code Ann. §58.1-302). A trust...is being administered in Virginia if, for example, its assets are located in Virginia, its fiduciary is a resident of Virginia, or it is under the supervision of a Virginia court. (Virginia Fiduciary Income Tax Regulation §630-5-302). The Virginia taxable income of a resident trust is its federal taxable income, subject to certain adjustments (Va. Code Ann. §§58.1-360, 58.1-361). A nonresident trust is taxed only on its Virginia source income (Va. Code Ann. §§58.1-362, 58.1-363).
3. “Every resident...trust which either is required to file a federal income tax return for the taxable year or which has any Virginia taxable income for the taxable year must file an income tax return” [Virginia Fiduciary Income Tax Regulation §630-5-381.A.1; Va. Code Ann. §58.1-381.A.1]. “Every nonresident...trust having Virginia taxable income for the taxable year determined under Va. Reg. §630-5-362 must file an income tax return” [Virginia Fiduciary Income Tax Regulation §630-5-381.A.2; Va. Code Ann. §58.1-381.A.2]. A copy of the federal return must be filed with the Virginia return.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. The Virginia taxable income of a resident trust is defined in Va. Code Ann. §58.1-361 as federal taxable income to which is added or subtracted the trust’s share of a Virginia fiduciary adjustment. The fiduciary adjustment is the trust’s share of certain modifications to the trust’s income which are allocated between the trust and its beneficiaries in the proportion that each shares in distributable net income (DNI).
 - (a) The Virginia modifications which are added to income (not an exclusive list) are:
 - (1) Interest, less related expenses not deductible in determining federal taxable income, on obligations of any state other than Virginia [Va. Code Ann. §58.1-322(B)(1)].
 - (2) Interest or dividends, less related expenses not deductible in determining federal taxable income, on obligations issued by the U.S. government which are exempt from federal income tax but not state income tax [Va. Code Ann. §58.1-322(B)(2)].
 - (3) Other income not exempt from Virginia tax and any lump sum distribution from a qualified retirement plan less the minimum distribution allowance and any amount excludable from federal income tax purposes by virtue of the averaging provisions of IRC Section 402 [Va. Code Ann. §58.1-322(B)(4)].
 - (b) The Virginia modifications which are subtracted from income (not an exclusive list) are:
 - (1) Interest or dividends on obligations/securities of any authority, commission or instrumentality of the U.S. exempt from state income tax under U.S. law including stocks, bonds, bills and notes; but excluding interest on federal tax returns [Va. Code Ann. §58.1-322(C)(1)].
 - (2) Refund or credit of income tax imposed by Virginia or other jurisdictions reported as income on the federal return [Va. Code Ann. §58.1-322(c)(5)].
 - (3) Interest on obligations of Virginia or its political subdivisions included in federal taxable income [Va. Code Ann. §58.1-322(C)(2)].
 - (4) Foreign source income — interest, dividends, rents, royalties, license and technical fees from sources outside the U.S. [Va. Code Ann. §58.1-322(C)(7)].The difference between the total additions and subtractions is referred to as “Net Virginia Modifications.” The Net Virginia Modifications are allocated among the beneficiaries and the fiduciary in the same proportion they share in federal DNI. If there is no DNI, a beneficiary’s share of the fiduciary adjustment is the proportion of his share of the trust’s accounting income for the year, as determined under local law or the governing instrument. DNI not distributed to beneficiaries remains in the trust and the fiduciary’s share of net Virginia modifications allocated to such undistributed DNI is the “fiduciary adjustment” added to or subtracted from the trust’s income (Va. Code Ann. §§58.1-361, 58.1-363).
3. Credits allowed (to a typical trust): Resident trusts are allowed a credit for income taxes paid to another state on income having its source within such state, unless a credit is given by the other state for taxes paid in Virginia. The credit may not exceed that proportion of Virginia tax due as income upon which the tax imposed by the other

state was computed bears to income on which the Virginia tax was determined (Va. Code Ann. §§58.1-332, 58.1-371). Nonresidents are allowed a credit for taxes paid in the nonresident's state on Virginia source income in the proportion that income taxable in Virginia bears to all income taxable in the other state, provided the other state grants a similar credit to Virginia residents, or taxes residents on Virginia income and exempts Virginia residents (Va. Code Ann. §58.1-332).

C. Rate for this tax as it applies to the net taxable amount of a trust —

The rates range from 2% on income up to \$3,000 to 5.75% for taxable income over \$17,000 (Va. Code Ann. §58.1-320).

WASHINGTON Income Tax

Stanley S. Pratt, Yakima
February 6, 2001

Washington does not impose an income tax.

WEST VIRGINIA Income Tax

Bruce L. Stout, Huntington
February 26, 2001

A. Numbered footnotes from chart —

1. W. Va. Code §11-21-30.
2. A "resident" trust is defined as one the donor of which was domiciled in West Virginia at the date of creation of the trust. [W. Va. Code §11-21-7(c)]. Taxation of a trust by West Virginia depends entirely:
 - (1) Resident trust — the donor of the trust was domiciled in West Virginia at the date of creation of the trust — date of death in case of testamentary trust, date of creation of trust in case of *inter vivos* trust.
 - (2) Nonresident trust — Taxable only on "West Virginia source income" — income from (i) real or tangible personal property situate in West Virginia, or (ii) a business, trade, profession or occupation carried on in West Virginia. Items of West Virginia source income retain their character in passing through a partnership, estate or trust (W. Va. Code §§11-21-30, 11-21-38).
3. Every "resident" trust required to file a federal income tax return is required to file a West Virginia return [W. Va. Code §11-21-51(a)(2)].
4. West Virginia has adopted the entire federal income tax law, with necessary constitutional and jurisdictional modifications.

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted.
2. West Virginia taxable income is federal taxable income with modifications (W. Va. Code §11-21-18). The taxable income of a nonresident trust is the federal adjusted gross income derived from West Virginia sources, which includes income attributable to the ownership of any interest in real or tangible personal property in West Virginia or a business, trade, profession or occupation carried on in the state, and income from intangible personal property to the extent that the income is from property employed in a business, trade, profession or occupation carried on in the state [W. Va. Code §§11-21-32, 11-21-38(2)].
3. Credits allowed (to a typical trust): West Virginia resident trusts are allowed a credit for income taxes paid to another state or to the District of Columbia upon revenue both derived from the other state and subject to tax in West Virginia, except that no credit is allowed where the other state allows residents of West Virginia a credit against the taxes imposed by the other state for the West Virginia tax, if such other credit is substantially similar to the credit granted to nonresidents by West Virginia (W. Va. Code §11-21-20). A nonresident is allowed a credit against the West Virginia tax for any income tax imposed by another state or the District of Columbia (where the nonresident resides), except that no credit is allowed except in accordance with a written agreement between West Virginia and the nonresident's residence jurisdiction (W. Va. Code §11-21-40).

C. Rate for this tax as it applies to the net taxable amount of a trust —

The rate of tax ranges from 3% on income up to \$10,000 to \$2,775 plus 6.5% of income over \$60,000 (W. Va. Code §11-21-4e). West Virginia imposes a "Business Registration Tax" of \$15.00 per year under Chapter 11, Article 12, for any "business activity" which includes all "purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit."

A. Numbered footnotes from chart —

1. [Wis. Stat. Ann. §§71.04(1)(a) and (4); 71.17(5) (99-00 Wis. Stats.)].
2. Wisconsin imposes a tax on the income derived from property located or business transacted within the state (Wis. Stat. Ann. §71.02). Wisconsin situs income includes income or gain from:
 - (1) Real or tangible property located in Wisconsin;
 - (2) A business, trade, profession or occupation carried on within Wisconsin, including income from a Wisconsin S corporation;
 - (3) Personal or professional services performed within Wisconsin either as an individual or a member of a partnership;
 - (4) The Wisconsin state lottery or parimutuel winnings [Wis. Stat. Ann. §71.04(1) (1989)].
3. For trusts that are irrevocable before October 29, 1999 a trust is considered resident where the trust is administered [Wis. Stats. §71.14(3)]. Thus if a Wisconsin bank has custody of the assets of such a trust, a Wisconsin tax could be imposed even though the trust was created in another state [Wis. Stats. §71.14(3)(a)]. For trusts that are irrevocable on or after October 29, 1999, a trust is considered resident at the domicile of the decedent at death, or in the case of an inter vivos trust, any trust created by a resident of Wisconsin is considered resident in Wisconsin.
4. A trust created by a decedent at death is considered resident at the domicile of the decedent at the time of the decedent's death [Wis. Stat. Ann. §71.14(2)].
5. A return is required by a nonresident trust if Wisconsin gross income is \$600 or more, or there was any Wisconsin taxable income [2000 Instructions for the Wisconsin Fiduciary Return, p. 1].
6. A distinction is made between testamentary and other trusts. A trust is subject to Wisconsin taxes if a Wisconsin court retains jurisdiction over a testamentary trust. If the testamentary trust is transferred to the control of a court in another state, the trust will be subject to Wisconsin taxes if there is Wisconsin situs income [Wis. Stat. Ann. §71.14(2)].

B. Summary description of tax computation components —

1. Starting amount (from chart, line F): Federal taxable income (TI) as adjusted (Wis. Stat. Ann. §71.05).
2. Wisconsin taxable income is based on federal taxable income subject to modifications [Wis. Stat. Ann. §§71.01(15), 71.125]. An income tax (or alternative minimum tax, if greater) is imposed upon the net income of trusts administered in the state and nonresident trusts on income derived from Wisconsin (Wis. Stat. Ann. §71.08).
3. Credits allowed (to a typical trust): A resident trust may claim a credit for income taxes paid to another state. A copy of the other state's return must accompany the Wisconsin return [Wis. Stat. Ann. §71.07(7)].

C. Rate for this tax as it applies to the net taxable amount of a trust —

Rates range from 4.6% on taxable income up to \$7,500 to 6.75% on income over \$112,500 [Wis. Stat. Ann. §71.06(1P)]. Capital gains are taxed at 40% of the above rates since 60% of capital gains are deducted to reach taxable income [Wis. Stat. Ann. §71.05(6)(b)].

Wyoming does not impose an income tax.