



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

dor_taxpolicy@state.co.us

PLR 22-002

July 14, 2022

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXX

Re: XXXXXXXXXX Trust

Dear XXXXXXXXXX,

You submitted a request for a private letter ruling on behalf of XXXXXXXXXX (the "Trustee"), as trustee of the XXXXXXXXXX (the "Trust"), regarding the residency status of the Trust to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Is the Trust a "resident trust" under section 39-22-103(10), C.R.S.?

Conclusion

No, the Trust's affairs are administered in Delaware, not in Colorado, and therefore, the Trust is a "nonresident trust."

Background¹

In XXXXXXXXXX the Trust was created for the benefit of the child of XXXXXXXXXX (the "Settlors") under a trust agreement between Settlers and the initial trustee, XXXXXXXXXX (the "Initial Trustee"). At the same time, Settlers, who have three children, created the XXXXXXXXXX Trust and the XXXXXXXXXX Trust.

The beneficiary of the Trust is XXXXXXXXXX (the "Beneficiary"). The Beneficiary became a resident of the state of Colorado on or about XXXXXXXXXX. The original situs of the Trust was the

¹ Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the request, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

state of California. The trust agreement provides that the trustee has the power to move the situs of the Trust from California to another state and from state to state as the trustee may deem appropriate from time to time.

At the time of the Trust's creation, Settlers were residents of the state of California. The Trust Agreement provides that the validity, interpretation, construction, and administration of the Trust shall be governed by the laws of the state of California. The trust agreement provides that the trustee shall have the power to change the designation of the Trust's governing law from the jurisdiction of California to another state and from state to state as the trustee may deem appropriate from time to time.

On XXXXXXXX, the Initial Trustee resigned as trustee of the Trust. Settlers appointed Trustee as successor trustee of the Trust.

Trustee accepted the role as successor trustee of the Trust on XXXXXXXX. Trustee is a corporation incorporated under the laws of the state of Delaware and has an office located at XXXXXXXX. On XXXXXXXX, as successor trustee of the Trust, Trustee transferred situs of the Trust from the state of California to the state of Delaware. Trustee handles the day-to-day administration of the Trust. All agents of Trustee, including the primary trust officer of the Trust, work out of Trustee's Delaware office located at XXXXXXXX. All the Trust's books, records, and accountings are held at such office. All investments made with respect to the Trust's direct holdings, if any, would be made by agents of Trustee at such office.

The Trust does not have any Colorado source income, as defined in section 39-22-403, C.R.S. The Trust is not registered in Colorado, and Trustee does not intend to register the Trust in Colorado at a future date.

Discussion

Colorado imposes income tax on the federal taxable income of every trust, as determined pursuant to section 63 of the Internal Revenue Code.² Every fiduciary is required to make a return for any trust for which the fiduciary acts.³ The requirement for a fiduciary to make a return applies to every resident trust and every nonresident trust that has income from Colorado sources for which a federal income tax return is required to be filed and every resident trust and every nonresident trust that has incurred any tax liability under any provision of article 22 of title 39, Colorado Revised Statutes.⁴ The term "resident trust" means a trust that is administered in Colorado, and the term "nonresident trust" means a trust other than a resident trust.⁵

The Trust is a nonresident trust. The Trustee is a Delaware corporation. The Trustee's agents, including the primary trust officer, handle the day-to-day administration of the Trust from the Trustee's Delaware office. All of the Trust's books, records, and accountings are held at the Trustee's Delaware office. All investments made with respect to the Trust's direct holdings, if any, would be made by agents of the Trustee at the Trustee's Delaware office. The Trust is administered in Delaware, not in Colorado, and therefore the Trust is a "nonresident trust."

² Section 39-22-104(1.7)(b), C.R.S.

³ Section 39-22-601(3), C.R.S.

⁴ Section 39-22-601(3)(b), C.R.S.

⁵ Section 39-22-103(10), C.R.S.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.