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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4650

05/09/2020 Authored by Davids
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; income; modifying criteria for determination of residency for
1.3 resident trusts; amending Minnesota Statutes 2018, section 290.01, subdivisions
1.4 7a, 7b.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 290.01, subdivision 7a, is amended to read:

1.7 Subd. 7a. Resident estate. Resident estate means the estate of a deceased person where
1.8 (1) the decedent was domiciled in Minnesota at the date of death and the decedent's domicile
1.9 is determined after applying the provisions in subdivision 7, paragraphs (c) and (d), or (2)
1.10 the personal representative or fiduciary was appointed by a Minnesota court in a proceeding
1.11 other than an ancillary proceeding, or (3) the administration of the estate is carried on in
1.12 Minnesota in a proceeding other than an ancillary proceeding.

1.13 EFFECTIVE DATE. This section is effective for estates of decedents dying after

1.14 Sec. 2. Minnesota Statutes 2018, section 290.01, subdivision 7b, is amended to read:

1.15 Subd. 7b. Resident trust. (a) Resident trust means a trust, except a grantor type trust,
1.16 which either (1) was created by a will of a decedent who at death was domiciled in this state
1.17 or (2) is an irrevocable trust, the grantor of which was domiciled in this state at the time the
1.18 trust became irrevocable. For the purpose of this subdivision, a trust is considered irrevocable
1.19 to the extent the grantor is not treated as the owner thereof under sections 671 to 678 of the
1.20 Internal Revenue Code. The term "grantor type trust" means a trust where the income or
1.21 gains of the trust are taxable to the grantor or others treated as substantial owners under
1.22 sections 671 to 678 of the Internal Revenue Code. This paragraph applies to trusts, except

2.1 grantor type trusts, that became irrevocable after December 31, 1995, or are first administered
2.2 in Minnesota after December 31, 1995.

2.3 (b) This paragraph applies to trusts, except grantor type trusts, that are not governed
2.4 under paragraph (a). A trust, except a grantor type trust, is a resident trust only if two or
2.5 more of the following conditions are satisfied:

2.6 (1) a majority of the discretionary decisions of the trustees relative to the investment of
2.7 trust assets are made in Minnesota;

2.8 (2) a majority of the discretionary decisions of the trustees relative to the distributions
2.9 of trust income and principal are made in Minnesota;

2.10 (3) the official books and records of the trust, consisting of the original minutes of trustee
2.11 meetings and the original trust instruments, are located in Minnesota.

2.12 (c) For purposes of paragraph (b), if the trustees delegate decisions and actions to an
2.13 agent or custodian, the actions and decisions of the agent or custodian must not be taken
2.14 into account in determining whether the trust is administered in Minnesota, if:

2.15 (1) the delegation was permitted under the trust agreement;

2.16 (2) the trustees retain the power to revoke the delegation on reasonable notice; and

2.17 (3) the trustees monitor and evaluate the performance of the agent or custodian on a
2.18 regular basis as is reasonably determined by the trustees.

2.19 (d) The following factors must not be considered by the commissioner or any court in
2.20 determining whether a trust is a resident trust:

2.21 (1) the location of the trust's attorney, certified public accountant, or financial adviser
2.22 who is not a trustee of the trust; and

2.23 (2) the place of business of a financial institution at which the trustee on behalf of the
2.24 trust applies for any new type of credit or at which the trustee on behalf of the trust opens
2.25 or maintains any type of account.

2.26 (e) The definitions under subdivision 7, paragraph (d), apply for purposes of this
2.27 subdivision.

2.28 **EFFECTIVE DATE.** This section is effective