

CHAPTER 105. ESTATES AND TRUSTS

| | |
|--------|---|
| Sec. | |
| 105.1. | Scope. |
| 105.2. | Taxability of estates, trusts, and their beneficiaries. |
| 105.3. | Application of tax. |
| 105.4. | Income of estates, trusts and their beneficiaries. |
| 105.5. | Special rules. |
| 105.6. | Illustration of the provisions of this chapter. |

§ 105.1. Scope.

This chapter deals with the taxation of estates and trusts and their beneficiaries. This chapter does not apply to any trust which, under the governing instrument and applicable State law, is revocable by the settlor. In such case, the settlor shall be deemed to be the recipient of the income or gains of the trust. The term trust, as used in this chapter, does not apply to any business trust including any trust treated as a real estate investment trust for Federal income tax purposes.

§ 105.2. Taxability of estates, trusts and their beneficiaries.

The income of a beneficiary of an estate or trust in respect of the estate or trust shall consist of that part of the income or gains received by the estate or trust for its taxable year ending within or with the beneficiary's taxable year which, under the governing instrument and applicable State law, is required to be distributed currently or is in fact paid or credited to the beneficiary. The income or gains of the estate or trust, if any, taxable to the estate or trust shall consist of the income or gains received by it which has not been distributed or credited to its beneficiaries.

§ 105.3. Application of tax.

The tax imposed by Chapter 103, Subchapter A (relating to persons subject to tax) is to be paid by the beneficiary of an estate or trust if the income upon which the tax is based is received by the estate or trust and, under the governing instrument and applicable State law, is required to be distributed to the beneficiary currently or is in fact paid or credited to him. The tax imposed by Chapter 103, Subchapter A is to be paid by the estate or trusts only if the income upon which the tax is based is not required to be distributed to the beneficiary currently and is not in fact paid or credited to him.

§ 105.4. Income of estates, trusts and their beneficiaries.

(a) *Income of estates and trusts.* The income of a resident estate or trust shall consist of the following:

- (1) The classes of income enumerated in Chapter 103, Subchapter B (relating to determination of tax) received by the estate or trust directly.

(2) The class of income enumerated in § 103.18 (relating to net gains or income derived through estates or trusts) that is, the classes of income enumerated in Chapter 103, Subchapter B received or derived from any other estate or trust.

(3) Other income not enumerated in Chapter 103, Subchapter B.

(b) *Resident and nonresident trust.* The income of a resident estate or trust taxable to the estate or trust shall consist of that portion of the classes of income described in a subsection (a)(1) and (2) received by the estate or trust for its taxable year and which has not been distributed, paid or credited to its beneficiaries. The income of a nonresident estate or trust taxable to the estate or trust shall consist of that portion of the classes of income described in a subsection (a)(1) and (2) received by the estate or trust from sources within this Commonwealth for its taxable year and which has not been distributed, paid or credited to its beneficiaries.

(c) *Income of beneficiaries of estates and trusts.* The income of beneficiaries of estates and trusts shall consist of the following:

(1) The income of a resident beneficiary of a resident or nonresident estate or trust shall consist of that portion of the classes of income of the estate or trust received by the estate or trust for its taxable year ending within or with the beneficiary's taxable year and which, under the governing instrument and applicable State law, is required to be distributed currently to the beneficiary or is in fact paid or credited to the beneficiary.

(2) The income of a nonresident beneficiary of a resident estate or trust shall consist of that portion of the classes of income of an estate or trust received by the estate or trust from sources within this Commonwealth for its taxable year ending within or with the beneficiary's taxable year and which, under the governing instrument and applicable state law, is required to be distributed currently to the beneficiary or is in fact paid or credited to him.

(3) An amount properly paid or credited to the beneficiary within the first 65 days of any taxable year of an estate or trust shall be considered paid or credited to the beneficiary on the last day of the preceding taxable year if the fiduciary of the trust or estate elects under this article to so treat such payments. The election under this article shall be made in a statement attached to the return for the first taxable year of the trust and any election so made shall be irrevocable for the taxable year and for all future taxable years.

(4) The income of a beneficiary derived from a resident estate or trust shall retain the same character in the hands of the beneficiary as in the hands of the estate or trust.

(5) If income or gains specified in this section are paid, credited, or required to be distributed by an estate or trust for a taxable year which does not end with or within the last taxable year of a beneficiary, because of the beneficiary's death, the amount taxable to the beneficiary shall consist of that part of the income or gains received by the estate or trust for its taxable year

in which the beneficiary's last taxable year ends which were in fact paid or credited to such beneficiary. Income required to be distributed, but in fact distributed to his estate shall be included as income of the estate.

(d) *Allocation of income between estates and trusts and their beneficiaries.* Except as otherwise provided in subsection (c), for purposes of this subsection, all income distributed, paid, or credited to a beneficiary after June 1, 1971 or after the beginning of any subsequent taxable year shall be deemed to be a distribution of income received by the estate or trust for its taxable year beginning June 1, 1971, or thereafter to the extent thereof and shall represent a pro rata portion of all classes of income received by the estate or trust for such taxable year. An estate or trust shall be deemed to have retained its pro rata portion of all classes of income if the amount paid, credited, or required to be distributed to its beneficiaries is less than all of its income for its taxable year unless the estate, trust or its beneficiary establishes that a particular class of income was not distributable to the beneficiaries, and in fact was not distributed, paid or credited to them. In such a case, all of the income shall be deemed to have been retained by the estate or trust. The estate or trust shall be deemed to have retained its pro rata portion of all other classes of income if the total amount paid, credited, or required to be distributed to its beneficiaries is less than the total of all the income for its taxable year.

Source

The provisions of this § 105.4 amended February 25, 1977, 7 Pa.B. 529.

Cross References

This section cited in 61 Pa. Code § 103.18 (relating to net gains or income derived through estates or trusts).

§ 105.5. Special rules.

(a) *Gifts, bequests and the like.* A gift or bequest of a specific sum of money or of specific property, which is required to be paid or distributed to a beneficiary by the specific terms of the will or trust instrument and is properly paid or credited to the beneficiary, shall not be deemed to be a distribution of income by the estate or trust to the beneficiary.

(b) *Amounts accumulated for charitable purposes.* In the case of an estate or trust, any amount of income required by the terms of the governing instrument to be accumulated and added to the principal for ultimate distribution to, or to be held in trust for the use of, any religious, charitable, scientific, literary, or educational organization shall be deemed to have been paid, credited, or required to be distributed to a charitable trust.

(c) *Accumulated income distributed by a nonresident estate or trust to a resident beneficiary.* Amounts received by a resident beneficiary from a nonresident estate or trust shall be taxable to the beneficiary in the year received to the extent

that such income was not subject to tax under this article. The resident beneficiary shall be allowed a credit against the tax otherwise due under this article for his pro rata share of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on the estate or trust with respect to such income by another state. The credit shall not exceed the proportion of the tax otherwise due. Reference should be made to § 111.4 (relating to limitation on credit).

§ 105.6. Illustration of the provisions of this chapter.

The provisions of this chapter are illustrated in general by the following examples:

(1) *Example I.* A resident trust shall be required under its governing instrument and applicable state law to distribute all of its income to the income beneficiary. Under the governing instrument and applicable state law, the term income shall not include net gains or net income from the sale or exchange of items of corpus. The fiscal year of the trust ends on September 30 and for the period June 1, 1971, to September 30, 1971, the trust has income as follows:

| <i>Subject</i> | <i>Amount</i> |
|-------------------|---------------|
| Net rental income | \$4,000 |
| Dividends | 8,000 |
| Interest | 8,000 |
| Net gains | 4,000 |

The trust paid the beneficiary \$16,000 on July 15, 1971, and \$16,000 on October 15, 1971. The trust has elected to treat distribution made within 65 days after the close of its taxable year as having been made at the last day of the preceding year. The trust shall be deemed to have retained the net gains and shall be subject to tax under § 103.1 (relating to tax imposed on residents) on \$4,000. The beneficiary shall be deemed to have received the \$4,000 of net rental income, the \$8,000 of dividend income, and the \$8,000 of interest income and shall be subject to tax under § 103.1 on \$20,000. The additional \$12,000 actually received by the beneficiary shall be deemed to have been paid from pre June 1, 1971 income and, under this chapter, shall not be subject to tax thereon.

(2) *Example II.* Assume the same facts as in Example I of this section and that the income is to be distributed in equal shares to A, a resident of this Commonwealth and to B, a nonresident of this Commonwealth. Assume further that the July 15 and October 15 payments were in equal shares to A and B. As in Example I of this section, the trust shall be subject to tax under § 103.1 on the \$4,000 of net gains. A shall be subject to tax under § 103.1 on his share of the net rental income, the dividend income, and the interest income. B shall be subject to tax under § 103.2 only on his share of the net rental income, provided that the property involved is situated in Pennsylvania.

(3) *Example III.* Assume the same facts as in Example II of this section and that half of the interest income was derived from obligations which are free from tax under an act of the General Assembly of this Commonwealth. As in Examples I and II of this section, the trust shall be subject to tax under § 103.1 on the \$4,000 of net gains. A and B shall be deemed to have received their pro rata share of each class of income distributable to them. Thus, A shall be subject to tax under § 103.1 on his share of the rental income, the dividend income, and half of the interest income and B shall be subject to tax under § 103.2 only on his share of the net rental income.

(4) *Example IV.* A resident trust shall be required under its governing instrument and applicable state law to distribute the first \$10,000 of income to A, a resident of this Commonwealth. The trustees are given discretionary powers with respect to distributions of the balance of the income. Under the governing instrument and applicable state law, the term income shall not include net gains or net income from the sale or exchange of items of corpus. During the taxable year the trust realizes net gains from the sale of property of \$10,000, receives dividends of \$10,000, receives interest income of \$10,000, of which \$5,000 is from Commonwealth obligations free from any tax and distributes \$15,000 to A. The trust shall be deemed to have retained the \$10,000 of net gains and its *pro rata* share of each of the other classes of income, namely 25% of the dividend income, taxable interest, and nontaxable interest. A shall be deemed to have received only his *pro rata* share of each of the classes of income required to be distributed to him, or in fact paid or credited to him, namely 75% of the dividend income, taxable interest, and nontaxable interest.

(5) *Example V.* Assume the same facts as in Example IV of this section and that during the following taxable year the trust realizes the same income in the same amounts and distributes \$25,000 to A. As in Example IV, the trust shall be deemed to have retained the \$10,000 of net gains. Inasmuch as the trust has distributed more than the amount of all other classes of income received by the trust for the taxable year, the trust shall not be deemed to have retained any of the other classes of income. A shall be deemed to have received all of the other classes of income received by the trust during its taxable year and shall be subject to tax under § 103.1 on the \$10,000 of dividend income and \$5,000 of taxable interest income. Neither the \$5,000 of nontaxable interest income nor the \$5,000 paid from previously accumulated and previously taxed income shall be taxable to A.

(6) *Example VI.* A nonresident trust shall be given discretionary powers with respect to distributions of income. During its taxable years ended December 31, 1971, 1972, and 1973, the trust realized income as follows:

| <i>Class of Income</i> <i>(in dollars)</i> | <i>12 / 31 / 71</i> | <i>12 / 31 / 72</i> | <i>12 / 31 / 73</i> |
|---|---------------------|---------------------|---------------------|
| Net rental | | | |
| Income | 7,000 | 12,000 | 12,000 |
| Dividends | 4,000 | 8,000 | 8,000 |
| Interest | 4,000 | 8,000 | 8,000 |
| Net gains | -0- | -0- | 10,000 |

The rental income was from property located in this Commonwealth and the net gain realized in the taxable year ended December 31, 1973, was from the sale of the rental property. No distributions were made to the beneficiary until March, 1974, when the trust distributed all of its assets to A, a resident of this Commonwealth. The trust shall be taxable on the \$7,000 of rental income realized in the taxable years ended December 31, 1971, on the \$12,000 of actual income realized in 1972 and 1973, and on the net gain from the sale of the rental property in the taxable year ended December 31, 1973. The trust shall not be subject to tax under this chapter on the dividend and interest income realized by the trust. The resident beneficiary shall be subject to tax in 1974 on the dividend and interest income accumulated by the trust and distributed to him in that year.

[Next page is 107-1.]