



Release of 1st Annual Non-Grantor Trust State Income Tax Chart

1st Annual Non-Grantor Trust State Income Tax Chart - Page 1 of 2

State (alphabetical)	Taxing Statute	Top 2015 Tax Rate	Under What Conditions does the State Tax a Non-Grantor Trust?
Alabama	Ala. Code §§65-18-1, 65-18-2	5.00%	If the trust is set up by the Will of an AL resident or settlor was an AL resident at time trust became irrevocable, and an AL resident is a beneficiary or trustee for more than seven months during the tax year
Alaska	****No tax**	0%	***No tax***
Arizona	Ariz. Rev. Stat. Ann. §44-1402	4.54%	If there is at least one AZ trustee
Arkansas	Ark. Code Ann. §66-1-201(a)(4)	7.00%	If the trust is set up by the Will of an AR resident or settlor was an AR resident, and there is an AR trustee
California	Cal. Rev. & Tax. Code §17121	13.30%	If the trust has either a CA trustee or a CA non-contingent beneficiary, tax apportioned based on CA vs. non-CA trustees and beneficiaries
Colorado	Colo. Rev. Stat. §15-11-103(4)	4.63%	If the trust is administered in CO
Connecticut	Conn. Gen. Stat. §38-407(a)(2)(B)	6.70%	If the trust is set up by the Will of a CT resident or settlor was a CT resident at time property transferred to an irrevocable trust or at the time property transferred to revocable trust that later became irrevocable -- other than for Will transfer, tax is modified fractionally to the extent there are nonresident non-contingent beneficiaries
Delaware	Del. Code Title 13, §1403(b)(2)	6.60%	If the trust is set up by the Will of a DE resident, or settlor of trust was a DE resident, or the majority of the trustees are DE; trust for more than 183 days in DE in all of such cases only if there is a DE beneficiary
Florida	****No tax**	0%	***No tax***
Georgia	GA Code §§46-1-12, 46-1-13	6.00%	If there is trust property located in GA or if the trustee is "managing funds for the benefit of a resident of" GA
Hawaii	Haw. Rev. Stat. Ann. §205-10	11.00%	If there is a HI trustee or if the trust is administered in HI, but only if there's a Hawaii beneficiary
Idaho	Idaho Rev. Stat. §20-2-102(2)	7.40%	If there are three or more of (1) Grantor is ID resident, (2) Trust governed by ID law, (3) Trust has real or tangible personal property located in ID, (4) Trust has ID trustee, and/or (5) Administration of trust in ID
Illinois	Ill. Rev. Stat. Ch. 110, §11-0.1	3.75%	If the trust is set up by the Will of an IL resident or settlor was an IL resident at time trust became irrevocable
Indiana	Ind. Admin. Code 45-5-1-1	3.30%	If the trust is administered in IN
Iowa	Iowa Admin. Code 421-10.1(1)	8.98%	Depends on "relevant facts of each case" -- Relevant facts include residence of trustees, location of administration, location of evidence of intangible assets of the trust, etc. -- Must read rules carefully
Kansas	Kan. Stat. Ann. §60-15-101	4.60%	If the trust is administered in KS
Kentucky	Ky. Rev. Stat. Ann. §140.010	6.00%	If the principal place of administration of the trust is in KY
Louisiana	La. Rev. Stat. Ann. §9-1101	6.00%	If the trust is set up by the Will of a LA resident, or an inter vivos trust set up by resident of any jurisdiction if trust instrument provides that the trust shall be governed by LA law, or if silent then taxed if administered in LA
Maine	Me. Rev. Stat. Ann. Title 26, §2601	7.95%	If the trust is set up by the Will of a ME resident or settlor was a ME resident
Maryland	Md. Code, Reg. Title 11, §11-101	5.75%	If the trust is set up by the Will of a MD resident or settlor "is a current resident of" MD or the trust is principally administered in MD -- Also note the 1.25% to 3.20% court tax
Massachusetts	Mass. Regs. Code 800.00001	5.15%	If the trust is set up by the Will of a MA resident and there is MA beneficiary, or if settlor was a MA resident at time of creation of inter vivos trust or at any time during year in which income is computed or who died as MA resident and there is MA beneficiary, but only if MA trustee -- Also note the 12.00% tax for short-term capital gains and gains for sales of collectibles
Michigan	Mich. Code Laws 207.1(1)	4.25%	If the trust is set up by the Will of a MI resident, or settlor was a MI resident at time trust became irrevocable, unless no MI trustee, no MI assets and no MI beneficiary
Minnesota	Minn. Stat. §62A.02	9.85%	If the trust is set up by the Will of a MN resident that died post-12/31/1995 or trust that became irrevocable post-12/31/1995, or for pre-1/1/1996 irrevocable trusts if the majority of discretionary investment distribution decisions are made in MN or the books or records located in MN
Mississippi	Miss. Code Ann. §26-1-1	5.00%	If the trust is administered in MS
Missouri	Mo. Rev. Stat. Ann. §143.010	6.00%	If the trust is set up by the Will of a MO resident or settlor was a MO resident at time trust became irrevocable, and a MO resident is a beneficiary on the last day of the tax year
Montana	Mont. Code Ann. §13-1-101	6.90%	If principal place of administration is in MT -- Principal place of administration is the usual place where day-to-day activities carried on by the trustee which is generally trustee's residence or usual place of business

By Steven J. Oshins, Esq., AEP (Distinguished)

The 1st Annual Non-Grantor Trust State Income Tax Chart is a two-page summary of the non-grantor trust state income tax rules in all states and Washington, D.C. The Chart can be accessed [here](#).

Each state and Washington, D.C. is listed in alphabetical order with the applicable statutory cite that is linked to the online taxing statute. Each jurisdiction's taxing rules are described briefly so the user can generally know the rules without having to read through the entire statute.

The online user should always click the link to the applicable statute to understand any details. The Chart also lists the highest tax rate so the end user can appreciate the value of saving that tax for the client's trust.

State Taxation of a Non-Grantor Trust

There must be thousands of existing non-grantor trusts that are needlessly paying state income tax on income that isn't distributed.

Different states have different rules as to what creates a "resident trust" that is subject to taxation in that state. Depending upon the state statute, a state may tax a trust based on one or more of the following reasons:

- A testamentary trust set up in the Will of the resident testator
- An inter vivos trust set up by a resident of that state
- A trust that is being administered in that state
- A trust with a resident trustee

- A trust where there is a beneficiary who is a resident of that state

Avoiding the Tax by Fixing the Trust

The opportunity to avoid a state income tax on the undistributed income of a non-grantor trust often makes a substantial impact on the value of the trust's underlying assets. By avoiding the tax drag inherent in a trust that is subject to state income tax, the trust grows in value much faster.

Depending upon the state rules, sometimes this is as simple as having a resident trustee resign or simply moving the administration of the trust to a different jurisdiction.

Other times, it will take more creativity, such as by decanting the trust or moving the situs of a trust to a trust situs that allows decanting to then decant the trust to modify it in such a way that it will avoid state income tax. [Decanting is a technique permitted by statute in 22 states that allows the trustee to distribute the assets from one irrevocable trust into a new irrevocable trust with different terms for one or more beneficiaries of the first trust.]

Modifying the ongoing state income tax might be next-to-impossible if the state taxes a trust solely based on the residency of the testator or settlor. This might require a court challenge to the constitutionality of the taxing statute.

Conclusion

This new chart, called the 1st Annual Non-Grantor Trust State Income Tax Chart, should open up opportunities for practitioners to save state income tax for their clients by moving and fixing any existing trusts that are needlessly paying state income tax.

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