

NEW FILING REQUIREMENTS INTRODUCED FOR NEW YORK STATE RESIDENT TRUSTS

The majority of New York State resident trusts will be required, for tax years beginning on or after January 1, 2010, to file state fiduciary income tax returns under a new Statement of Department Policy from the New York State Department of Taxation and Finance.

Resident trusts are not subject to state income tax if:

- the trust has no New York source income,
- all real and tangible property in the trust is located outside New York; and
- all of the trustees are domiciled outside of New York State.

New York resident trusts were previously excluded from state income tax filing requirements if they were not subject to New York State income taxes. *The new rule requires the trust to file a return if it is required to file a Federal return or if it has any New York source taxable income.*

This rule applies to all new and existing New York State resident trusts.

Under New York State law, a resident trust is defined as one that is:

- created under the Will of a New York domiciliary,
- irrevocable when funded by a New York domiciliary,
- revocable when funded by a New York domiciliary, if it has not later become irrevocable, or
- revocable when created, but at the time it became irrevocable the person who funded it was a New York domiciliary.

Resident trusts that are not subject to tax but are required under the new rule to file Form IT-205, *New York State Fiduciary Income Tax Return*, will also be required to complete and attach new Form IT-205-C, *New York State Resident Trust Nontaxable Certification*, to Form IT-205.

For questions about your trust and for information on state and Federal filing requirements, please contact Ira Herman, CPA, partner and Trust and Estate Practice director, at iherman@jhcohn.com or 973-618-6245, or your J.H. Cohn engagement partner.

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