



Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402

April 6, 2021

To: Minnesota House Tax Committee Members

Re: Resident trust definition in HF991 A-21 (omnibus tax bill), Art. 2, Sec. 9

Chair Marquart and Committee Members,

Established in 1883, the Minnesota State Bar Association (MSBA) represents approximately 13,000 attorneys who practice throughout the state. The MSBA's Tax Law Section, Elder Law Section, and Probate & Trust Law Section have deep concerns about the revised definition of "resident trust" proposed in the House omnibus tax bill, and therefore urge that it not be adopted.

The proposed language, which contains a non-exclusive list of seven factors, provides no practical guidance to taxpayers about which connections to Minnesota—or which of a countless combination of connections—will be sufficient to satisfy taxation consistent with due process. Consequently, taxpayers will be left with three unsatisfying options:

1. Litigate numerous cases until courts establish the boundaries of due process for trust taxation.
2. Acquiesce to resident trust status and taxation in Minnesota even when connections between a trust and the state are insignificant.
3. Sever connections with Minnesota.

The first option places an expensive burden on taxpayers. Those who cannot afford to litigate would be forced to accept the second option, or elect the third, which would involve ending relationships with Minnesota-based attorneys and other trust service providers. This is an inefficient and unprincipled way to administer a tax system.

The goal, we believe, should be a statute that provides clear guidance and ensures that taxpayers pay what they owe—no more and no less—without driving business out of Minnesota. To that end, we are working on alternative language. However, given the complexity of the issue and the large number of stakeholders both inside and outside the MSBA, it will take more time to properly vet any changes. We urge lawmakers to take a similarly patient and careful approach in addressing this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan Lake", is written over a light blue horizontal line.

Bryan Lake
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