

# Rosen Seymour Shapss Martin & Company LLP

*Certified Public Accountants & Profitability Consultants*

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## LIFELINES BLAST

### Greetings!

*Welcome to the Fiduciary Services Group's Lifelines Blast!* (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your trust and estate needs.

We welcome your questions or comments about topics discussed or related ones. Please feel free to contact us at 212-303-1012 or e-mail us at [awillinger@rssmcpa.com](mailto:awillinger@rssmcpa.com) and let us know how we can be of assistance.

Sincerely,

Alan M. Willinger, CPA, JD  
Partner-in-Charge of Fiduciary Services

## New York Resident Trusts Now Required to File Tax Returns Even If Not Taxed in New York

In a recently released memorandum (TSB-M-10(5)I), the New York Office of Tax Policy announced that a resident trust that meets the conditions of section 605(b)(3)(D) of the Tax Law will be required to file a New York State fiduciary income tax return if it meets the filing requirements for resident trusts.

In general, a resident trust is subject to New York tax if it has any New York taxable income for the tax year. Under New York State Tax Law, a resident trust is:

- a trust created by the will of a decedent who was domiciled in New York State at the time of his or her death;
- an irrevocable trust that consists of property of a person

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domiciled in New York State when the property was transferred to the trust;

- a revocable trust consisting of property of a person domiciled in New York State at the time the property was transferred to the trust if it has not later become irrevocable; or
- a revocable trust that has later become irrevocable if the trust consists of property of a person domiciled in New York State when it becomes irrevocable.

Note: The resident status of the fiduciary does not affect the resident status of a trust.

Under the prior rule, if a resident trust was not subject to New York income tax, no New York fiduciary income tax return (IT-205) was required.

The new rule applies to existing trusts as well as new trusts and is effective for tax years beginning on or after January 1, 2010.

## **Property Inherited in 2010: Federal and New York State Tax Effects**

Prior to 2010, property received from a decedent acquired a new basis equal to the fair market value of the property at the date of death (or in some cases Historically, the basis of inherited property has been its fair market value on date of death (or at the alternate valuation date, six months after death). If an heir sold inherited property soon after death, there may be little or no gain or loss: the appreciation up to the date of death would escape income tax due to a basis step up to fair market value on the decedent's death.

In 2010, the estate tax has been repealed and to date Congress has not enacted any new law with respect to the estate tax on either a prospective or retroactive basis. Nevertheless, the New York State estate tax remains in effect.

### **Federal basis**

For property acquired from a decedent dying in 2010, a modified carryover basis regime applies. This regime lets an executor allocate a set amount among the assets, increasing their bases up to-but not over-their fair market values. The set amount starts at \$1.3 million increased by the sum of the (1) decedent's unused capital loss carryover, (2) decedent's unused net operating loss carryover, and (3) the amount of any loss that would have been allowable if the property acquired from the decedent had been sold at fair market value immediately before the decedent's death. If the decedent is survived by a spouse, the executor may allocate an additional \$3 million to any interest in property that the decedent's surviving

spouse acquired from the decedent and any qualified terminal interest property.

The modified carryover basis regime is only in effect for one year beginning January 1, 2010 and has very complex rules. Furthermore, since the starting point for basis is the decedent's basis, a huge burden falls on executors and their advisers to gather the necessary information to substantiate the basis of the decedent.

### **State basis**

The starting point for basis under the New York state law is the federal tax basis. For tax years before January 1, 2010, this resulted in the heir receiving a stepped up basis for both estate and income tax purposes. Therefore, upon the sale of an inherited asset the federal and New York state capital gain would have been the same. For the 2010 tax year, the 1998 New York State estate tax law remains in effect so that the pre-death appreciation in excess of \$1 million will be subject to New York estate tax.

However, the consequence of there not being any federal estate in 2010 could create a situation whereby the estate would pay New York estate tax based upon the fair market value and also pay New York income tax on the capital gain computed with reference to the pre-death basis. This is an unfortunate result and at this time New York has no plans to address this situation. We will continue to monitor this issue and update you if and when New York addresses the double taxation being imposed on New York taxpayers.

### **Welcome Patricia A. Giarratano, CPA, MST**

Patricia Giarratano, CPA, MST joined the firm as the Director of Fiduciary Services. With over 20 years experience, Ms. Giarratano specializes in complex estate and gift tax planning, estate and trust administration, and fiduciary tax compliance. Ms. Giarratano provides a broad range of knowledge in tax planning, compliance and consulting services and works closely with high net worth individuals and owners of closely-held businesses to advise them on business strategies, income tax planning and succession planning to preserve family wealth through the use of effective estate planning strategies. Ms. Giarratano also has a broad knowledge base in the area of individual and partnership taxation, retirement planning, and education planning. She has advised clients from a wide range of industries including but not limited to financial services, manufacturing, real estate, entertainment, not-for-profit, and entrepreneurs.

### **FIDUCIARY SERVICES GROUP**

## Rosen Seymour Shapss Martin & Company LLP

RSSM's Fiduciary Services Group offers a wide range of fiduciary services. We assist and guide fiduciaries as they perform their duties and fulfill their obligations. In appropriate circumstances, we can also serve as trustee, and/or executor for you and your family. We will provide your family with protection and security by helping you plan for the future with incapacity protection, probate avoidance, planning for minor children, distribution planning and estate tax planning. Our team approach allows us to provide you with the most basic protection and our experience enables us to assist you with the most complex arrangements, including charitable giving and sophisticated estate tax strategies.

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