

State Residency and Source Income Factors for State Income Taxation of Irrevocable Non-Grantor Trusts

Companion chart to "Incomplete Gift, Non-Grantor Trusts - Not Just for State Income Tax Avoidance" and "Spousal Lifetime Access Non-Grantor Trusts" CLE/article/webinars, compiled by Ed Morrow, J.D., LL.M. (tax), CFP® - permission to reprint with attribution expressly permitted. Any **bold** or [bracketed comments] are added by author and are not in statute. There are two fundamental bases for taxation of non-grantor trust income: *residency* and *source*. States may tax all income of their *residents* but only *source* income of non-residents. Excerpts chosen from trust *residency* statutes focus on taxation of irrevocable non-grantor trusts (grantor trusts are usually ignored as separate taxpayers and thus most states look to the deemed owner's state of residence for income tax purposes, although Pennsylvania has unique rules). Excerpts from source income statutes focus on sale of LLC/LP/closely held corporations (since such sales are likely to be the largest source of avoidable income), and omit common source income provisions such as taxation of ongoing income from partnerships and pass through entities in state, wage income from services performed in state, state lottery winnings or sales of tangible property or real estate in state. Please contact the author with any updates, additions or corrections from your state at edwin.morrow3@gmail.com or edwin.morrow@usbank.com, or for future updates, as this will be periodically updated. Any field colored in **blue** contains a hyperlink directly to the state statute, regulation, case law, articles and/or other instructions or authority.

In left column, a shorthand summary of factors for trust residency is listed. **Never** rely on simple shorthand summaries or charts trying to pigeonhole a state's tax scheme into particular categories or checked boxes. Sometimes the opportunities will lie in navigating between the exact wording of the statute or nuances in the regulations, advisory rulings or case law. I use "settlor" to refer to the state regarding the residency of the settlor as relevant, "fiduciary" to refer to a state that deems the residency of the fiduciary/trustee to be relevant, "administration" where the state deems in-state administration to be relevant, "law" where the state deems the applicable law of the trust to be relevant, "beneficiary" where the state deems the residency of a beneficiary to be relevant, "assets" where the state deems the location of assets in state to be relevant (separately from source income rules) and "testator" when the residency of a decedent is relevant (which may only refer to estates and not revocable trusts unless "settlor" is also listed). There can be many permutations and combinations.

Also in the left column below the trust residency factors is a shorthand summary of source income taxation of pass through and closely held business entities (e.g. LLC/LPs, closely held corporations), where those states passing the UDITPA (Uniform Division of Income for Tax Purposes Act) are noted with that acronym and those generally following *mobilia sequenter personam* are noted with "MSP". This phrase, loosely translated as "movables follow the person", generally means that taxation of the sale of intangible entities is based on the residency of the owner (e.g. trust), *not* where the entity does business or owns assets. For more discussion of this, see *Ed Morrow on Corrigan v. Testa: Avoiding State Income Tax on Source Income*, LISI Income Tax Planning Newsletter #93 (May 25, 2016).

For each state, the first rows will be trust residency statutes and/or regulations, followed by source income rules for sales of pass through entities. Additional notes may include links to state administrative code, state fiduciary income tax return instructions, important case law or state tax department rulings. Note that in many states, the source income rules may be different for sales of *general* partnership interests. Since extremely few people have any significant wealth in *general* partnerships with the rise of cheap and simple LLCs, LP, LLP, LLLPs etc (or could easily entitle prior to any sale), I have not always included those rules, which may be different from sales of entities.

State, its Top Marginal Income Tax Rate and Shorthand	<h2>Citations w/Hyperlinks to State Statutes, Regulations, Advisory Rulings, Cases and Articles</h2> <p>(While effort is made to ensure accuracy, practitioners should do their own legal and tax research)</p>
Alabama (5%) Trust residency factors: settlor, fiduciary, beneficiary	<p>AL Code § 40-18-1(21): "A trust is a resident trust for a taxable year if it is a trust which meets both a. and b.:</p> <ul style="list-style-type: none"> a. The trust is created by the will of a decedent who was an Alabama resident at death or by a person who was an Alabama resident at the time such trust became irrevocable; and b. For more than seven months during such taxable year, a person, as defined in this section, who either resides in or is domiciled in Alabama is either a fiduciary of the trust or a beneficiary of the trust to whom distributions currently may be made."
	<p>From Alabama Fiduciary Income Tax Return Form 41 Instructions:</p> <p>"Nonresident estates and trusts must report Alabama source income in accordance with §40-18-14. Nonresident estates and trust are allowed deductions in computing Alabama taxable income in accordance with §40-18-15."</p>
	<p>Ala. Code §40-18-14, in referring to the term gross income for nonresident individuals, states:</p> <p>“... The term “gross income,” in the case of a resident individual, includes income from sources within and outside Alabama, and in the case of a nonresident individual, includes only income from property owned or business transacted in Alabama...”</p>
	<p>Ala. Code § 40-18-25: "(3) In the case of a nonresident beneficiary, income derived through an estate or trust is taxable by this state only to the extent it is derived from property owned or business transacted in this state and as determined in accordance with this section.***</p> <p>(d) The tax on an electing small business trust, for which an election under 26 U.S.C. §1361(e) is in effect, and on the beneficiaries of such trust shall be determined as follows:</p> <p>(1) The portion of the trust that consists of stock in one or more Alabama S corporations, as defined in Section 40-18-160, shall be treated as a separate trust. The net income of the separate trust shall be computed including only the items taken into account under Section 40-18-162, gain or loss from the disposition of stock of an Alabama S corporation, and federal income taxes and administrative expenses allocable to the income items treated under this subdivision. The net income shall be taxed at the rate of five percent. The separate trust shall not be allowed any personal exemption.</p> <p style="text-align: right;">***(h) For the purpose of determining any income tax due by any nonresident beneficiary of any trust or estate, the income from intangible personal property shall not be construed to arise from sources within the state merely because the title and ownership of such intangible personal property is vested in a resident fiduciary, resident trust, or resident estate or the evidence of ownership thereof is located within the state."</p>
Source Income: UDITPA, MSP	<p>Alabama has adopted the Multistate Compact (UDITPA) at Ala. Code § 40-27-1: "6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state. (b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs. (c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state."</p>

	Regarding commercial domicile and sales of business, Alabama further clarified with an addition to UDITPA at ALA CODE §40-27-1.1: "Notwithstanding any other provision of law to the contrary and specifically, Section 40-27-1, for purposes of Article IV of the Multistate Tax Compact, the term "business income" means income arising from transactions or activity in the course of the taxpayer's trade or business; or income from tangible or intangible property if the acquisition, management, or disposition of the property constitute integral parts of the taxpayer's trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Alabama or operationally related to sources within Alabama, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Alabama; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Alabama while the stock was owned by the taxpayer. A taxpayer may have more than one trade or business in determining whether income is business income."
	Alabama Department of Revenue Website
Alaska (0%)	No income tax imposed on trusts. Yet. There have recently (2017) been proposals to add an income tax in AK to close budget deficits but as of early 2019 this appears unlikely.
	Alaska Department of Revenue website
Arizona (4.54%) Trust residency factors: fiduciary	Ariz. Rev. Stat. § 43-1301(5): "5. "Resident trust" means a trust of which the fiduciary is a resident of this state. If a trust has more than one fiduciary, the trust is a resident trust if at least one of the fiduciaries is a resident of this state. If a corporate fiduciary engaged in interstate trust administration is the sole fiduciary of a trust, or is a co-fiduciary with a nonresident, the trust is a resident trust only if the corporate fiduciary conducts the administration of the trust in this state."
In 2019, top rate reduced to 4.5%	From Arizona Fiduciary Income Tax Return Form 141AZ Instructions: "The starting point for a nonresident trust is that portion of the trust's federal taxable income derived from Arizona sources.***** Intangible income will not be considered to be from Arizona sources except where it is part of a business, trade, or occupation carried on in Arizona."
	Ariz. Rev. Stat. §43-1091. Gross income of a nonresident A. In the case of nonresidents, Arizona gross income includes only that portion of federal adjusted gross income which represents income from sources within this state.
	Ariz. Rev. Stat. §43-1092. Intangible income of a nonresident A. Except as provided in subsection B of this section, income of nonresidents from stocks, bonds, notes or other intangible personal property is not income from sources within this state unless the property has acquired a business situs within this state, except that if a nonresident buys or sells such property in this state or places orders with brokers within this state to buy or sell such property so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is income from sources within this state irrespective of the situs of the property. However, in no case shall transactions extending over a period of less than six months be deemed to constitute doing business in this state. B. Any income received by nonresidents which is derived from a small business corporation making an election pursuant to section 43-1126 shall be considered taxable income of this state.
	Ariz. Rev. Stat. §43-1093. Nonresident beneficiary of estate or trust income Income of estates and trusts distributed or distributable to nonresident beneficiaries is income from sources within this state only if distributed or distributable out of income of the estate or trust derived from sources within this state.

<p>Arkansas (6.9%, also only 50% of LTCG is taxed, with amounts over \$10 million 100% exempt. No, this is not a typo or mistake, see page 2 of Form AR1002F) Top rate for 2019 reduced to 6.6%. For 2020, 5.9%.</p>	<p>AR Code § 26-51-201(a)-(c): (a) For tax years beginning on and after January 1, 2014, a tax is imposed upon, and with respect to, the entire income of every resident, individual, trust, or estate.</p> <p>***</p> <p>(b) However, no state income tax shall be due this state from a trust or estate created by a nonresident donor, trustor, or settlor, or by a nonresident testator even though administered by a resident trustee or personal representative except on income derived from:</p> <ol style="list-style-type: none"> (1) Lands situated in this state, including gains from any sale thereof; (2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof; (3) Tangible personal property located in Arkansas, including gains from any sale thereof; and (4) Unincorporated businesses domiciled in Arkansas. <p>(c) No income tax shall be due the State of Arkansas from a nonresident beneficiary on income received from a trust being administered by a resident trustee except on income derived by the trust from:</p> <ol style="list-style-type: none"> (1) Lands situated in this state, including gains from any sale thereof; (2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof; (3) Tangible personal property located in Arkansas, including gains from any sale thereof; and (4) Unincorporated businesses domiciled in Arkansas.
<p>Trust residency factors: settlor, fiduciary</p>	<p>Ark. Code § 26-51-203. Fiduciaries.</p> <p>(a) The tax imposed by this act shall be imposed upon resident fiduciaries, which tax shall be levied, collected, and paid annually with respect to:</p> <ol style="list-style-type: none"> (1) That part of the net income of estates or trusts which has not been distributed or become distributable to beneficiaries during the income year. In the case of two (2) or more joint fiduciaries, part of whom are nonresidents of this state, such part of the net income shall be treated as if each fiduciary had received an equal share; (2) The net income received during the income year by deceased individuals who at the time of death were residents and who have died during the tax year without having made a return; (3) The entire net income of resident insolvent or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of the net income. <p>(b) The tax imposed upon a fiduciary by this act shall be a charge against the estate or trust.</p>
	<p>From Arkansas Fiduciary Income Tax Return Instructions AR1002F: "WHO MUST FILE</p> <p>The fiduciary return is used to report the income of an estate or trust. Every fiduciary, or at least one of the joint fiduciaries, must file a return for the estate or trust for which they act, provided any of the following apply:</p> <ol style="list-style-type: none"> 1. Any income is currently distributable; 2. The tax is payable by the beneficiaries or by the grantor; 3. The net income is \$3,000 or over and/or 4. Any beneficiary is a nonresident.

Source Income: UDITPA, MSP	<p>Arkansas has passed the UDITPA at AR Code §26-51-701 et seq. AR Code § 26-51-706. Capital gains and losses from sales of property:</p> <p>(a) Capital gains and losses from sales of real property located in this state are allocable to this state.</p> <p>(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:</p> <p>(1) the property had a situs in this state at the time of the sale, or</p> <p>(2) the taxpayer's commercial domicile is in this state, or</p> <p>(3) the property has been included in depreciation which has been allocated to this state; in which event gains or losses on such sales shall be allocated on the percentage that is used in the formula for allocating income to Arkansas during the year of such sales.</p> <p>(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.</p>
	Arkansas Department of Finance and Administration Website
California (13.3%, but top rate not reached until \$1 million) Trust residency factors: fiduciary, beneficiary, testator	<p>Cal. Rev. & Tax. Code § 17742: Income taxable to the estate or trust; Residence of decedent or trust fiduciary to control</p> <p>"(a) Except as otherwise provided in this chapter, the income of an estate or trust is taxable to the estate or trust. The tax applies to the entire taxable income of an estate, if the decedent was a resident, regardless of the residence of the fiduciary or beneficiary, and to the entire taxable income of a trust, if the fiduciary or beneficiary (other than a beneficiary whose interest in such trust is contingent) is a resident, regardless of the residence of the settlor.</p> <p>(b) For purposes of this article the residence of a corporate fiduciary of a trust means the place where the corporation transacts the major portion of its administration of the trust."</p>
	18 CCR § 17742
	Cal. Rev. & Tax. Code § 17006: "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, estate or trust.
	<p>Cal. Rev. & Tax. Code § 17743:</p> <p>Where the taxability of income under this chapter depends on the residence of the fiduciary and there are two or more fiduciaries for the trust, the income taxable under Section 17742 shall be apportioned according to the number of fiduciaries resident in this state pursuant to rules and regulations prescribed by the Franchise Tax Board.</p>
	18 CCR § 17743 Taxability of Trust Dependent upon Residence of Fiduciary.
	<p>Cal. Rev. & Tax. Code § 17744:</p> <p>Where the taxability of income under this chapter depends on the residence of the beneficiary and there are two or more beneficiaries of the trust, the income taxable under Section 17742 shall be apportioned according to the number and interest of beneficiaries resident in this state pursuant to rules and regulations prescribed by the Franchise Tax Board.</p>
	18 CCR § 17744 Taxability of Trust Dependent upon Residence of Beneficiary

Excerpt from the California Franchise Tax Board website: **Taxability of estates and trusts**

If the decedent and noncontingent beneficiaries are all nonresidents of California (for an estate), or if the fiduciaries and noncontingent beneficiaries are all nonresidents of this state (for a trust), only the following income is taxable (California Regulation Section 17742):

Income from real or personal property located in this state (Cal. Reg. 17951-3).

Business carried on within this state (Cal. Reg. 17951-4).

Intangible personal property having a business or taxable situs in this state (Cal. Reg. 17952).

A noncontingent beneficiary is one whose interest is not subject to a condition precedent (California Regulation 17742(b)).

Taxability of estate and trust based on residency

Income is taxable to the estate or trust; **residency of the decedent or the trust fiduciary** is the controlling factor:

Under CR&TC Section 17742, the entire income of an estate is taxable if the decedent was a resident, regardless of the fiduciary's or the beneficiary's residence.

Under this same section, the entire income of a trust is taxable if the fiduciary or a noncontingent beneficiary is a resident, regardless of the residence of the settler.

[State of California Franchise Tax Board Estate and Trusts Filing Requirements](#)

[California Franchise Tax Board Technical Advice Memorandum 2006-0002, interpreting Ca. Rev. & Tax. Code § 17742](#)

[2018 Instructions for Form FTB 5870A Tax on Accumulation Distribution of Trusts](#)

[Bizarre, but California does not have a link to Fiduciary Income Tax Return Form 541 Instructions, but you can have them email them to you here](#)

[Paula Trust v. California Franchise Tax Bd., No. CGC-16-556126 \(Cal. Super. Ct. 3/7/18\) - article on important case that practitioners in CA should follow, currently on appeal, re loopholes in source income taxation of California resident trusts](#)

[The Paula Trust case was recently reversed on the source income issue and affirmed on the issue of whether an income beneficiary was contingent in *Steuer v. Franchise Tax Board*, No. A154691 \(Cal. Ct. App. 1st Dist. June 29, 2020\)](#)

[Spidell's California Taxletter: *When is an irrevocable trust's income taxable in California?* By Richard B. Malamud, J.D., LL.M., CPA](#)

[18 CA ADC § 17951-1 through § 17951-6, regulations pertaining to source income taxation of non-residents](#)

[CA Rev & Tax Code § 17952. For purposes of computing taxable income of a nonresident or part-year resident under paragraph \(1\) of subdivision \(i\) of Section 17041, income of nonresidents from stocks, bonds, notes, or other intangible personal property is not income from sources within this state unless the property has acquired a business situs in this state, except that if a nonresident buys or sells such property in this state or places orders with brokers in this state to buy or sell such property so regularly, systematically, and continuously as to constitute doing business in this state, the profit or gain derived from such activity is income from sources within this state irrespective of the situs of the property.](#)

[In the Matter of the Consolidated Appeals of: THE 2009 METROPOULOS FAMILY TRUST; THE EVAN D. METROPOULOS 2009 TRUST, OTA Case Nos. 18010012, 18010013, November 7, 2019 - case on CA source taxation and apportionment of S Corp gain to non-resident trusts re CR&TC Sections 17951&17952](#)

California Franchise Tax Board Internal Procedures Manual Residency & Sourcing Technical Manual Rev.: April 2009, "Section 3350 INTANGIBLE PERSONAL PROPERTY: R&TC Section 17952 states that income of nonresidents from stocks, bonds, notes, or other intangible personal property is not income from sources within this state unless the property has acquired a business situs in California. The California Supreme Court determined in *Merton L. Miller v. Charles J. McColgan*, (1941) 17 Cal. 2d 432, that gains from stock had their source in the stock itself and the situs of the stock was the residence of its owner. The court applied the doctrine of *mobilia sequuntur personam*, which means "movables follow the person." ***Sale of a partnership interest is considered a sale of an intangible asset. See the Appeal of Amyas and Evelyn P. Ames et al., 1987-SBE-042, June 17, 1987."

Appeal of Amyas and Evelyn P. Ames et al., 1987-SBE-042, June 17, 1987 - taxpayers who were non-CA residents sold a limited partnership interest in a partnership that did business in California (real estate in Los Angeles). The government argued that the partnership interest itself had a CA situs (and could therefore be taxed), but the court found that *mobilia sequuntur personam* applied and the sale of an intangible asset is sourced to the state of residency and therefore not taxed by California.

What Planners Need to Know about California Fiduciary Income Tax, 30-page outline by attorneys Erica B. Deutsch, Francisco Garcia, Jr. and Steven E. Trytten
When Should a Trust be Subject to State Income Tax in California? CA. Tax Lawyer Fall 2014 Volume 23, Number 3 by Justin T. Miller and Richard S. Kinyon

Colorado (4.63%) , with exclusion for LTCG on real or tangible property held >5yrs on up to \$100,000	<p>"Resident trust" means a trust which is administered in this state. "Nonresident trust" means a trust other than a resident trust. Colo. Rev. Stat. § 39-22-103(10)</p> <p>From page 6 of Fiduciary Tax Return Instructions: "Interest, dividends, gains or losses from the sale of stocks and bonds, and pension and annuity income shall not be considered Colorado source income for a nonresident estate or trust."</p> <p>Also, Colorado has a provision requiring the trustee to register any trusts that have their principal place of administration in Colorado. Colo. Rev. Stat. § 15-16-101</p>
Trust residency factors: administration Source income: UDITPA, MSP	<p>Note that for source income, the Colorado tax <i>statute</i> §39-22-109 (1st link below) differs from the <i>regulation</i> under that same statute (3d link below) as to the sale of partnerships or LLC/LPs taxed as partnerships: Regulation §39-22-109(e)(ii) states that: "Sale of Interest in Pass-through entity. Gain or loss from the sale of a Member's active interest in a Pass-through entity is Colorado-source income in the same proportion as the entity's average apportionment factor for the immediately prior three tax years. Gain or loss from the sale of a Member's passive interest in a Pass-through entity is not Colorado-source income. A Member's interest is passive if, in the tax year the interest is sold, the Member did not materially participate in the Business of the Pass-through entity as defined in §469(h), I.R.C." "Pass-through entity" is defined earlier in the regulation as "(e) 'Pass-through entity' means a partnership, limited partnership, limited liability partnership, a limited liability company that is treated as a partnership for Colorado tax purposes or a trust that is not taxed at the entity level (e.g., a grantor-type trust)." This differs from the statute, Co. Rev. Stat. § 39-22-109, which generally follows the UDITPA and reads: "(V) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in Colorado. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession, or occupation in Colorado solely by reason of the purchase and sale of property for his own account." Unlike the regulation, the statute does <i>not</i> differentiate between active and passive interests. Thus, the capital gains on sale of S corp stock or an intest in LLC/LP by a non-resident who is passive (does not materially participate) will escape CO income tax whereas the sale of interest in LLC/LP where the owner materially participates may not. That said, the regulation may not be an appropriate and reasonable interpretation of the statute (or could even be unconstitutional) - this would ultimately have to be decided by a court. Colorado's regulation is in many respects similar to the source income tax scheme in Oregon - see article linked to below in the Oregon section on how to avoid this trap for sales of LLC/LP/S corps. If the trust does not materially participate, it may avoid CO tax on sale of the LLC/LP interest, but then the income would likely be subject to the federal 3.8% net investment income tax.</p>

	Colorado Revised Statutes Title 39 Taxation § 39-22-109 Income of a nonresident individual for purposes of Colorado income tax
	<p>Colorado Revised Statutes Title 39 Taxation § 39-22-403 Income of a nonresident estate or trust subject to income tax</p> <p>(1) In the case of a nonresident estate or trust, the tax imposed by section 39-22-104 shall be apportioned in the ratio of the Colorado-source federal taxable income to the total federal taxable income, both modified as provided in section 39-22-104.</p> <p>(2) Colorado-source federal taxable income of an estate or trust means:</p> <p>(a) Its share of the Colorado-source federal distributable net income as determined in section 39-22-404 ; and</p> <p>(b) Its share of any Colorado-source income, gain, loss, and deduction recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the estate or trust as determined under section 39-22-109, as in the case of a nonresident individual, and modified as provided in section 39-22-104.</p>
	Colorado Revised Statutes Title 39 Taxation § 39-22-104 Income tax imposed on individuals, estates, and trusts
	Colorado Revised Statutes Title 39 Taxation § 39-22-404 Share of a nonresident estate, trust, or beneficiary in income from sources within Colorado
	Code of Colorado Regulation 39-22-109 COLORADO-SOURCE INCOME (this link is to all regulations, see pages 21-33 for source income regulations)
	Colorado Rev. Stat. § 39-22-303.5 Single-factor apportionment of business income--allocation of nonbusiness income--rules--definitions
	Colorado Department of Revenue website
Connecticut (6.70%, increased to 6.99% as of 2018) Trust residency factors: testator or settlor, w/ beneficiary	<p>Conn. Gen. Stat. § 12-701(a)(4) “Resident trust or estate” means (A) the estate of a decedent who at the time of his death was a resident of this state, (B) the estate of a person who, at the time of commencement of a case under Title 11 of the United States Code,1 was a resident of this state, (C) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of his death was a resident of this state, and (D) a trust, or a portion of a trust, consisting of the property of (i) a person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable, (ii) a person who, if the trust was revocable at the time the property was transferred to the trust, and has not subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust or (iii) a person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a resident of this state at the time the trust became irrevocable. For purposes of this chapter, if any trust or portion of a trust, other than a trust created by the will of a decedent, has one or more nonresident noncontingent beneficiaries, the Connecticut taxable income of the trust, as defined in subdivision (9) of this subsection, shall be modified as follows: The Connecticut taxable income of the trust shall be the sum of all such income derived from or connected with sources within this state and that portion of such income derived from or connected with all other sources which is derived by applying to all such income derived from or connected with all other sources a fraction the numerator of which is the number of resident noncontingent beneficiaries and the denominator of which is the total number of noncontingent beneficiaries. For purposes of section 12-700a [Connecticut has its own state alternative minimum tax (AMT)], if any trust or portion of a trust, other than a trust created by the will of a decedent, has one or more nonresident noncontingent beneficiaries, its adjusted federal alternative minimum taxable income, as defined in section 12-700a shall be modified as follows: The adjusted federal alternative minimum taxable income of the trust shall be the sum of all such income derived from or connected with sources within this state and that portion of such income derived from or connected with all other sources which is derived by applying to all such income derived from or connected with all other sources a fraction, the numerator of which is the number of resident noncontingent beneficiaries and the denominator of which is the total number of noncontingent beneficiaries. As used in this subdivision, “noncontingent beneficiary” means a beneficiary whose interest is not subject to a condition precedent.</p> <p>(5) “Nonresident trust or estate” means any trust or estate other than a resident trust or estate or a part-year resident trust.</p>

	<p>Conn. Agency Reg. Sec. 12-701(a)(9)-1 Connecticut taxable income of a resident trust or estate"*** (b)(1) The Connecticut taxable income of a resident nontestamentary trust with one or more nonresident noncontingent beneficiaries shall be the sum of:</p> <p>(A) all of the Connecticut taxable income of the trust that is derived from or connected with sources within this state, and</p> <p>(B) the Connecticut taxable income of the trust that is derived from or connected with all other sources multiplied by a fraction, the numerator of which is the number of resident noncontingent beneficiaries, if any, and the denominator of which is the total number of noncontingent beneficiaries, whether resident or nonresident.</p> <p>(2) "Derived from or connected with sources within this state" is to be so construed so as to accord with the definition of the term "derived from or connected with sources within this state" set forth in Part II in relation to the adjusted gross income of a nonresident individual.</p> <p>(3) For purposes of this subsection, "noncontingent beneficiary" means every beneficiary whose interest is not subject to a condition precedent and includes every individual to whom a trustee of a nontestamentary trust during the taxable year (i) is required to distribute currently income or corpus (or both) or (ii) properly pays or credits income or corpus (or both) or (iii) may, in the trustee's discretion, distribute income or corpus (or both). "Noncontingent beneficiary" includes every beneficiary to whom or to whose estate any of the trust's income for the taxable year is required to be distributed at a specified future date or event and every beneficiary who has the unrestricted lifetime or testamentary power, exercisable currently or at some future specified date or event, to withdraw any of the trust's income for the taxable year or to appoint such income to any person, including the estate of such beneficiary. The provisions of this subsection also apply to a noncontingent beneficiary which is a trust or an estate, and wherever reference is made in this subsection to an individual who is a noncontingent beneficiary, such reference shall be construed to include a trust or estate which is a noncontingent beneficiary, but shall not be construed to include a corporation which is a noncontingent beneficiary."</p>
	<p>CT Gen Stat § 12-711(3): "Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from sources within this state only to the extent that such income is from (A) property employed in a business, trade, profession or occupation carried on in this state***"</p>

Reg. § 12-711(b)-5. Income from intangible personal property

(a) Items of income, gain, loss and deduction derived from or connected with Connecticut sources **do not include such items attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in Connecticut.**

Example: Taxpayer A, a resident of New York, owns 100% of the stock of X Corporation, which operates a store in Connecticut. In 1992, the corporation pays A a salary of \$20,000, all of which was earned in Connecticut, and a dividend of \$2,000. A's income from Connecticut sources is his salary of \$20,000, since the dividend is not income derived from Connecticut sources.

(b) Intangible personal property is employed in a business, trade, profession or occupation carried on in this state if such property's possession and control have been localized in connection with a business, trade, profession or occupation in Connecticut, so that the property's substantial use and value attach to and become an asset of such business, trade, profession or occupation. An example is where a nonresident pledges stocks, bonds or other intangible personal property in Connecticut as security for the payment of indebtedness incurred in connection with a business being carried on in Connecticut by the nonresident. Another example is where a nonresident maintains a branch office in Connecticut and an interest-bearing checking account on which the agent in charge of the branch office may draw checks for the payment of expenses in connection with the activities in this state.

(c) If intangible personal property of a nonresident is employed in a business, trade, profession or occupation carried on in Connecticut, the entire income from such property, including gains from its sale, regardless of where the sale is consummated, is income derived from or connected with sources within this state. However, where a nonresident individual sells real or tangible personal property located in Connecticut and, as a result of such sale, receives intangible personal property (e.g., a note) which generates interest income and capital gain income, such interest income is generally not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property; however, such capital gain income is attributable to the sale of the real or tangible personal property located in Connecticut. See §§ 12-711(b)-3 and 12-711(b)-8 of this Part. Therefore, such interest income to a nonresident does not constitute income derived from or connected with Connecticut sources. However, interest income derived from an instrument received as a result of a sale of real or tangible personal property located in Connecticut, where the instrument is employed in a business, trade, profession or occupation carried on in this state, does constitute income derived from or connected with Connecticut sources. □

Connecticut Income Tax Return Form CT-1041 Instructions for Trusts and Estates

Connecticut Department of Revenue Services website

Delaware
(6.60%) Trust
residency factors:
testator, settlor,
fiduciary (but not a
factor only by
itself)+A99+A121

30 DE Code § 1601:

***⁽⁸⁾ "Resident trust" means a trust:

- a. Created by the will of a decedent who at death was domiciled in this State;
- b. Created by, or consisting of property of, a person domiciled in this State; or
- c. With respect to which the conditions of 1 of the following paragraphs are met during more than $\frac{1}{2}$ of any taxable year:
 1. The trust has only 1 trustee who or which is:
 - A. A resident individual of this State, or
 - B. A corporation, partnership or other entity having an office for the conduct of trust business in this State;
 2. The trust has more than 1 trustee, and 1 of such trustees is a corporation, partnership or other entity having an office for the conduct of trust business in this State; or
 3. The trust has more than 1 trustee, all of whom are individuals and $\frac{1}{2}$ or more of whom are resident individuals of this State .

(9) "Trust" means an entity classified as a trust for federal income tax purposes, other than a trust of which the grantor or another person is treated as the owner of the entire trust under §§ 672 through 679 of the Internal Revenue Code [26 U.S.C. §§ 672-679].

Source Income: MSP	30 DE Code § 1124 Income derived from sources in Delaware: "****(c) Intangibles. — Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from sources within this State only to the extent that such income is from property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in this State. For purposes of this subsection, intangible assets of the taxpayer which are treated as held for investment for federal income tax purposes (or would be so treated if such assets were held by an individual) shall not be considered as property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in this State. Notwithstanding the foregoing and for purposes of this subsection, assets whose acquisition, management and disposition constitute integral parts of the taxpayer's regular trade or business operations (other than the operations of a taxpayer whose trade or business is that of investing) shall not be considered held for investment."
	State of Delaware Division of Revenue
District of Columbia (8.95%) Trust Residency Factors: testator, settlor	D.C. Code § 47-1809.01: "For the purposes of this subchapter, estates and trusts are: (1) Resident estates or trusts, or (2) nonresident estates or trusts. If the decedent was at the time of his death domiciled within the District, his estate is a resident estate, and any trust created by his will is a resident trust. If the decedent was not at the time of his death domiciled within the District, his estate is a nonresident estate, and any trust created by his will is a nonresident trust. If the creator of a trust was at the time the trust was created domiciled within the District, or if the trust consists of property of a person domiciled within the District, the trust is a resident trust. If the creator of the trust was not at the time the trust was created domiciled within the District, the trust is a nonresident trust. If the trust resulted from the dissolution of a corporation organized under the laws of the District of Columbia the trust is a resident trust. If the trust resulted from the dissolution of a foreign corporation, the trust is a nonresident trust."
	D.C. Code § 47-1809.02: "The residence or situs of the fiduciary shall not control the classification of estates and trusts as resident or nonresident under the provisions of § 47-1809.01."
	DC Code § 47-1810.02. Allocation and apportionment of District and non-District income. *** (A) Capital gains and losses from sales of real property located in the District are allocable to the District. (B) Capital gains and losses from sales of tangible personal property are allocable to the District if: (i) The property had a situs in the District at the time of the sale; or (ii) The taxpayer's commercial domicile is in the District and the taxpayer is not taxable in the state in which the property had a situs. (C) Capital gains and losses from the sales of intangible personal property are allocable to the District if the taxpayer's commercial domicile is in the District.
	District of Columbia Office of Tax and Revenue
Florida (0%)	No income tax; however, real estate transfer taxes are higher than most states - contact FL counsel for such transfers, even if transferring LLC/LP
	Florida Department of Revenue

<p>Georgia (6.0%) In 2019, top rate reduced 5.75% and may further reduce in 2020. Trust Residency Factors: beneficiary</p>	<p>GA Code § 48-7-22: (a) The tax imposed by this chapter shall be:</p> <p>(1) Imposed upon resident fiduciaries and upon nonresident fiduciaries:</p> <p>(A) Receiving income from business done in this state;</p> <p>(B) Managing funds or property located in this state; or</p> <p>(C) Managing funds or property for the benefit of a resident of this state;</p> <p>(2) Imposed upon fiduciaries subject to the tax at the rates provided in this article for single individuals;</p> <p>(3) Levied, collected, and paid annually with respect to:</p> <p>(A) That part of the net income of an estate or trust which has not become distributable during the taxable year. It is the purpose of this Code section to tax fiduciaries or beneficiaries on all income otherwise taxable under this chapter. Income received by a resident fiduciary shall not be subject to the tax imposed by this chapter when the income is accumulated for, is distributed, or becomes distributable during the taxable year to a nonresident of this state and when the income was received from business done outside this state, property held outside this state, or intangible property, other than from the licensing for use of the property, held by a fiduciary, including, but not limited to, gains from the sale or exchange of the property. No return of income exempt under this subparagraph shall be required;</p> <p>(B) The taxable net income received during the taxable year by a deceased individual who at the time of death was a taxpayer and who died during the taxable year or subsequent to the taxable year without having made a return; and</p> <p>(C) The entire taxable net income of an insolvent or incompetent person, whether or not any portion of the taxable net income is held for the future use of the beneficiaries, when the fiduciary has complete charge of the net income.</p>
	<p>From Georgia Fiduciary Income Tax Return Instructions: ***Every resident and nonresident fiduciary having income from sources within Georgia or managing funds or property for the benefit of a resident of this state is required to file a Georgia income tax return on Form 501." The 2019 instructions include "(see our website for information regarding the U.S. Supreme Court Kaestner decision)". See bulletin below.</p>
	<p>On August 13, 2019, the Georgia Department of Revenue issued Policy Bulletin IT-2019-02</p> <p>Taxation of Nonresident Trust Fiduciaries – Effect of Kaestner Decision, limiting its following of Kaestner to the narrowest of facts: "In reaching its conclusion that the North Carolina beneficiaries alone did not supply the minimum connection necessary to sustain the State's tax, the Court cited the following three factors:</p> <ol style="list-style-type: none"> 1. The beneficiaries did not receive any income from the trust during the years in question; 2. The beneficiaries had no right to demand trust income or otherwise control, possess, or enjoy the trust, assets in the tax years at issue; and 3. Not only were the beneficiaries unable to demand distributions in the tax years at issue, but it was also uncertain whether they would ever receive any income from the trust in the future. <p>Although the Department must follow the Kaestner decision, it is limited in scope to the facts in that case.</p> <p>Therefore, with respect to facts that are specifically like those in Kaestner, a nonresident trust fiduciary would not be subject to Georgia taxation. Otherwise, the fiduciary would be subject to taxation under O.C.G.A. §48-7-22 and must file a return."</p>

O.C.G.A. § 48-7-1 Definitions: ***(11) "Taxable nonresident" means:

(A) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engages within this state, by himself or herself or by means of employees, agents, or partners, in employment, trade, business, professional, or other activity for financial gain or profit, including, but not limited to, the rental of real or personal property located within this state or for use within this state. "Taxable nonresident" does not include a legal resident of another state whose only activity for financial gain or profit in this state consists of performing services in this state for an employer as an employee when the remuneration for the services does not exceed the lesser of 5 percent of the income received by the person for performing services in all places during any taxable year or \$5,000.00;

(B) Every individual who is not otherwise a resident of this state for income tax purposes and who sells, exchanges, or otherwise disposes of tangible property which at the time of the sale, exchange, or other disposition has a taxable situs within this state or who **sells, exchanges, or otherwise disposes of intangible personal property which has acquired at the time of the sale, exchange, or other disposition a business or commercial situs within this state;**

(C) Every individual who is not otherwise a resident of this state for income tax purposes and who receives the proceeds of any lottery prize awarded by the Georgia Lottery Corporation; ***

Ga. Comp. R. & Regs. 560-7-8-.01(1)(b)(5): "5. Intangibles. The gain or profit of a non-resident from the sale, exchange or other disposition of intangible personal property, including stocks, bonds and other securities, ordinarily is not taxable and should not be included in gross income, except to the extent that such intangible personal property has acquired a business situs in this State."

Georgia Department of Revenue website

Hawaii (11.0%)
Trust Residency Factors: fiduciary, administration

Haw. Rev. Stat. §§ 235-1 Definitions: "Resident estate" means an estate of a resident decedent the fiduciary of which was appointed by a court of this State and the administration of which is carried on in this State, and **"resident trust" means a trust of which the fiduciary is a resident of the State or the administration of which is carried on in the State.**

Hawaii Administrative Rule §18-235-1.17

"Resident trust", defined. "Resident trust" means the same as in section 235-1, HRS.

(1) If the administration of the trust is carried on wholly in the State the trust shall be deemed a resident trust irrespective of the place of residence of the fiduciary or fiduciaries.

(2) If the sole fiduciary, or all of the fiduciaries if more than one, are residents, domestic corporations, or partnerships formed under Hawaii law, the trust shall be deemed a resident trust irrespective of the place where the trust is administered.

(3) If the administration of the trust is partly carried on in the State, the trust shall be deemed to be a resident trust if one-half or more of the fiduciaries are residents, domestic corporations, or partnerships formed under Hawaii law.

Source Income: UDITPA, MSP but see partnership rule highlighted	<p>HI Rev Stat §235-26 Allocation of capital gains and losses. (a) Capital gains and losses from sales of real property located in this State are allocable to this State. (b) Capital gains and losses from sales of tangible personal property are allocable to this State if: (1) The property had a situs in this State at the time of the sale; or (2) The taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs. (c) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State. (d) Gain or loss from the sale of a partnership interest is allocable to this State in the ratio of the original cost of partnership tangible property in the State to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than fifty per cent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the partnership interest was sold.</p>
	<p>Hawaii Administrative Rules and Regulations under Title 18 Chapter 235 Income Tax Law</p>
	<p>State of Hawaii Department of Taxation</p>
Idaho (7.4%) For 2018, top rate reduced to 6.925% . Trust Residency Factors: testator, settlor, fiduciary, assets, law, administration	<p>ID Code § 63-3015. estates and trusts. "(1) An estate is treated as a resident estate if the decedent was a resident of Idaho on the date of death. (2) A trust, other than a qualified funeral trust, is treated as a resident trust if three (3) or more of the following conditions existed for the entire taxable year: (a) The domicile or residency of the grantor is in Idaho; (b) The trust is governed by Idaho law; (c) The trust has real or tangible personal property located in Idaho; (d) The domicile or residency of the trustee is in Idaho; (e) The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing trust assets, making administrative decisions, recordkeeping and preparation and filing of tax returns."***</p>
Source Income: Although Idaho has passed UDITPA, see deviation in paragraph (vii) of the statute and paragraph d. of the administrative rule	<p>Id. Code § 63-3026A: COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. ***(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:***(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;***(vii) Gains or losses realized from the sale or other disposition of a partnership interest or stock in an S corporation to the extent of the partnership's or S corporation's Idaho apportionment factor in the taxable year immediately preceding the year of sale. In the case of a nonresident individual who sells the nonresident's interest in a publicly traded partnership defined in section 7704 of the Internal Revenue Code doing business in Idaho, the gains or losses shall be determined using the amount described in section 751 of the Internal Revenue Code, multiplied by the apportionment factor for the year in which the sale occurred.</p>

	<p>Idaho Income Tax Administrative Rule 35.01.01.266 01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. The following are exceptions to this rule. Effective Date (4-11-06)</p> <p>a. If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. Effective Date (7-1-99)</p> <p>b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. Effective Date (7-1-99)</p> <p>c. Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. Effective Date (7-1-99)</p> <p>d. Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. However, a gain or loss from the sale of an interest in a publicly traded partnership transacting business in Idaho is Idaho source income to the extent of the gain or loss determined under Section 751, Internal Revenue Code, multiplied by the Idaho apportionment factor of the partnership for the year in which the sale occurred. Effective Date (2-27-12)</p>
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	<p>Idaho Form 66 2019 Fiduciary Income Tax Return and Instructions</p>
<p>Illinois (4.95% as of July 1, 2017, flat not progressive)</p>	<p>35 Ill. Comp. Stat. 5/1501(a)(20)(C)–(D)</p> <p>(20) Resident. The term "resident" means:</p> <p>***</p> <p>(C) A trust created by a will of a decedent who at his death was domiciled in this State; and</p> <p>(D) An irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable. For purpose of this subparagraph, a trust shall be considered irrevocable to the extent that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code.</p>
<p>Trust residency factors: testator, settlor, but see further limitations in <i>Linn</i> case, though not an IL Sup Ct case.</p>	<p>IITA Section 301 a) General definition. The term "resident" is defined in IITA Section 1501(a)(20) to mean:</p> <p>1) an individual who is in Illinois for other than a temporary or transitory purpose during the taxable year or who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year;</p> <p>2) the estate of a decedent who, at his or her death, was domiciled in Illinois;</p> <p>3) a trust created by the will of a decedent who, at his or her death, was domiciled in Illinois; and</p> <p>4) an irrevocable trust, the grantor of which was domiciled in Illinois at the time the trust became irrevocable. For the purpose of this subsection (a)(4), a trust is considered irrevocable to the extent that the grantor is not treated as the owner of the trust under 26 USC 671 through 678.</p>

86 Ill. Adm. Code §100.9720 - Nexus: ***e) U.S. Constitutional Jurisprudence. If not protected by U.S. or Illinois statute, an income-producing activity may, nonetheless, be protected from State taxation by principles of U.S. Constitutional jurisprudence. Controlling decisions that assert protections afforded by the Interstate Commerce Clause, the Foreign Commerce Clause and the Due Process Clause are accepted by this State as limitations on the reach of its income tax and personal property tax replacement income tax statutes. However, nothing stated in this subsection (e) shall prevent Illinois from challenging taxpayer assertions of U.S. Constitutional protection.

f) Application of the Joyce Rule. In determining whether the activity of a nonresident taxpayer conducted in this State is sufficient to create nexus for application of Illinois income tax or replacement tax, the principles established in *Appeal of Joyce Inc., Cal. St. Bd. of Equal.* (11/23/66), commonly known as the "Joyce rule," shall apply. Only activity conducted by or on behalf of the nonresident taxpayer shall be considered for this purpose. Because the income of a partnership, a Subchapter S corporation or any other pass-through entity is treated as income of its owners, activity of a pass-through entity is conducted on behalf of its owners. **Activity conducted by any other person, whether or not affiliated with the nonresident taxpayer, shall not be considered attributable to the taxpayer, unless the other person was acting in a representative capacity on behalf of the taxpayer.**

Link to *Linn v. Department of Revenue*, 2013 IL App (4th) 121055 discussed in material.

35 ILCS 5/303: "(b) Capital gains and losses.

- (1) Real property. Capital gains and losses from sales or exchanges of real property are allocable to this State if the property is located in this State.
- (2) Tangible personal property. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this State if, at the time of such sale or exchange:
 - (A) The property had its situs in this State; or
 - (B) The taxpayer had its commercial domicile in this State and was not taxable in the state in which the property had its situs.
- (3) Intangibles. **Capital gains and losses from sales or exchanges of intangible personal property are allocable to this State if the taxpayer had its commercial domicile in this State at the time of such sale or exchange.**"

Illinois Dept of Tax letter ruling IT 16-0006-GIL 11/23/2016 confirming section 35 ILCS 5/303 applies: no tax on sale of stock by non-resident

Ill. Adm. Code §100.3220(b)(3): "Intangible Personal Property. Capital gains and losses from sales or exchanges of intangible personal property are allocated to Illinois if the taxpayer has its commercial domicile in Illinois at the time of the sale or exchange. (ITA Section 303(b)(3)) For the tests of commercial domicile, see Section 100.3210"

Illinois Department of Revenue Form IT-1041 Fiduciary Income Tax Return Instructions

<p>Indiana (3.4%), lowering to 3.23% flat as of January 1, 2017. Counties may also have income tax rates of 1% to 3.13% that may apply to non-wage income such as capital gains, unlike most states.</p> <p>Trust residency factors: administration</p>	<p>Ind. Admin. Code tit. 45, r. 3.1-1-12: Determination of Indiana Taxable Adjusted Gross Income for Fiduciaries. For purposes of the taxes imposed upon the income of estates or trusts and paid by the fiduciary thereof, estates and trusts are classified as either resident or nonresident. The residence of an estate or trust is the place where it is administered. Resident estates or trusts are taxable on all income regardless of where earned. Deductions are limited to those deductions taken and allowable on the Federal Fiduciary Return, Form 1041. Nonresident estates and trusts are taxable in Indiana on all income derived from Indiana sources. Income derived from sources within Indiana is divided into business and non business income.</p> <p>(A) Business income is income derived from transactions in the regular course of the taxpayer's trade or business, including income from intangibles where intangibles are an integral part of that business. Business income from a business located in Indiana would be included as income for a nonresident estate or trust. Such income would include rents or leases from property located in Indiana.</p> <p>(B) Nonbusiness income would include all other income other than business income. Such income shall be considered as derived from sources within Indiana if the property from which the income is derived has a situs in Indiana, and the property does not have a situs in any other state and the taxpayer has a commercial domicile in Indiana, or in the case of patent, or copyright royalties, the patent or trademark is either utilized in Indiana or utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Indiana. (Department of State Revenue; Reg 6-3-1-3.5(c)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)</p>
	<p>From Indiana Department of Revenue Fiduciary Income Tax FAQs (Frequently Asked Questions)</p> <p>***7. Is the estate or trust a resident or nonresident of Indiana?</p> <p>For purposes of filing the Indiana Fiduciary Income Tax Return, estates and trusts are classified as either resident or nonresident. For Indiana, the estate or trust residence is determined by the place where it is administered. Therefore, you must determine where the trustee or personal representative is located and where the records are kept for the trust or estate.</p> <p>Resident estates or trusts are taxable on all income from all sources regardless of where it is earned. Therefore, resident fiduciaries must report all income wherever derived.</p> <p>Nonresident estates and trusts are taxable in Indiana on all income derived from Indiana sources. Nonresident estates and trusts must adjust federal taxable income (or loss) to reflect taxable income allocable to Indiana.</p> <p>Income received from Indiana sources is considered Indiana income to nonresidents, except certain types of Indiana source income that are subject to tax only by the taxpayer's legal state of residence. Interest, dividends, royalties and gains from the sale of capital assets are subject to tax only by the taxpayer's state of legal residence unless such income results from the conduct of a trade or business in Indiana. If a trade or business is conducted in Indiana, the income should be reported as Indiana income.</p>
<p>Source Income: although Indiana has not passed UDITPA, this rule is similar</p>	<p>Ind. Code Ann. § 6-3-2-2 (i) (1) Capital gains and losses from sales of real property located in this state are allocable to this state.</p> <p>(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:</p> <ul style="list-style-type: none"> (i) the property had a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs. <p>(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.</p>
	<p>Indiana Department of Revenue</p>

Iowa (8.98%), Top rate for 2019- 2020 reduced to 8.53%	<p>IA Code § 422.6 Income from estates or trusts</p> <p>The tax imposed by section 422.5 less the amounts of nonrefundable credits allowed under this division apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries. ***</p> <p>The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to the accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code. The trust is not entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax.</p>
Trust Residency Factors: testator, fiduciary, administration, assets	<p>Iowa Admin. Code r. 701-89.3(1) Testamentary trusts. The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.</p> <p>(2) Inter vivos trusts. If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules. If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. Sections 671 to 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: the residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, is not a controlling factor as to the situs of the trust, unless the person is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.</p>
	<p>Iowa 2019 Form 1041 Instructions</p>

<p>Source Income: Iowa is not a UDITPA state, see differentiations between sales of entities noted</p>	<p>Iowa Administrative Code §40.16(9): "Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa. Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs: a. Capital gains from sales or exchanges of stock in C corporations and S corporations. When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis. *** b. Capital gains from sales or exchanges of interests in partnerships. When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or "sourced" at the situs of the partnership's activities as a matter of law. <i>Arizona Tractor Co. v. Arizona State Tax Com'n</i>, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange. Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph "a" of this subrule. *** d. Capital gains from sales or exchanges of interests in limited liability companies. Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph "c" of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph "a" of this subrule."</p>
<p>Kansas (4.8%, increased to 5.7% as of 2018)</p>	<p>Iowa Department of Revenue website Kan. Stat. Ann. §§ 79-32,109(d): "Resident trust" means a trust which is administered in this state. A trust shall not be deemed to be administered in this state solely because it is subject to the jurisdiction of a district court within this state. "Nonresident trust" means a trust other than a resident trust.</p>

Trust residency factors: administration Source income: UDITPA, MSP	<p>Kan. Stat. § 79-32,109(h): "Modified Kansas source income" means that part of a nonresident individual's Kansas adjusted gross income as set forth in K.S.A. 79-32,117, and amendments thereto, derived from sources in Kansas. Items of income*** shall be considered derived from sources in Kansas to the extent that they are attributable to: (1) The ownership of any interest in real or tangible personal property in this state; (2) a business, trade, profession or occupation carried on in this state; (3) a business, trade, profession or occupation carried on partly within and partly without this state as determined by the uniform division of income for tax purposes act as set forth in K.S.A. 79-3271 through K.S.A. 79-3293, and amendments thereto; (4) the distributive share of partnership income, gain, loss and deduction determined under this section as if the partnership were a nonresident individual; (5) the share of estate or trust income, gain, loss and deduction determined under K.S.A. 79-32,137, and amendments thereto; (6) prizes won from lottery games conducted by the Kansas lottery; (7) any winnings from parimutuel wagering derived from the conduct of parimutuel activities within this state; or (8) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession or occupation carried on in Kansas. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of such dealer's trade or business, shall not be deemed to carry on a business, trade, profession or occupation in Kansas solely by reason of the purchase and sale of property for such nonresident's own account. "Modified Kansas source income" shall not include: *** (2) such individual's share of distributed or undistributed taxable income or net operating loss of a corporation which is an electing small business corporation unless an agreement is filed as provided in K.S.A. 79-32,139, and amendments thereto, in which event, the "modified Kansas source income" of such nonresident individual shall include such individual's share of such corporation's distributed and undistributed taxable income or net operating loss as such share is determined under the internal revenue code only to the extent, however, that such income, gain or loss is at the corporate level, derived from sources within Kansas.</p>
	<p>Kansas Department of Revenue website</p> <p>Kentucky (6.0% over \$75,000, with change to 5% flat + add back 199A deduction, starting Jan 1, 2018 per HB 366/487, see KRS §141.020)</p> <p>103 KAR 19:010. "Computation of income; estates and trusts: Section 1. General. All provisions of KRS Chapter 141 (and related administrative regulations) that apply to individuals shall also apply to fiduciaries and returns filed by fiduciaries, except when such provisions conflict with provisions dealing specifically with fiduciaries. ***Section 4. Resident Estate or Trust. A resident estate or trust shall report and pay tax on all taxable income except that portion of net income distributable or distributed during the taxable year, and that portion of the net income from intangible personal property attributable to a nonresident beneficiary.</p> <p>Section 5. Resident Beneficiary. A resident beneficiary must report and pay tax on his share of the distributed or distributable income from a resident or nonresident estate or trust.</p> <p>Section 6. Nonresident Estate or Trust and Nonresident Beneficiaries. A nonresident estate, trust, or beneficiary is subject to tax only on income received from real or tangible personal property located in Kentucky."</p>

Trust residency factors: fiduciary, administration	<p>KRS §386B.1-060 Principal place of administration.</p> <p>(1) Without precluding other means for establishing a connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:</p> <ul style="list-style-type: none"> (a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or (b) All or part of the administration occurs in the designated jurisdiction. <p>(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.</p> <p>(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.</p> <p>(4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer shall include:</p> <ul style="list-style-type: none"> (a) The name of the jurisdiction to which the principal place of administration is to be transferred; (b) The address and telephone number at the new location at which the trustee can be contacted; (c) An explanation of the reasons for the proposed transfer; (d) The date on which the proposed transfer is anticipated to occur; and (e) The date, not less than sixty (60) days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer. <p>(5) The authority of a trustee under this section to transfer a trust's principal place of administration ends if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.</p>
	<p>Kentucky Fiduciary Income Tax Return Instructions</p>
Source income: Kentucky has passed UDITPA, but see modifications	<p>KRS §141.020(4): "****A nonresident individual shall be taxable only upon the amount of income received by the individual from labor performed, business done, or from other activities in this state, from tangible property located in this state, and from intangible property which has acquired a business situs in this state; provided, however, that the situs of intangible personal property shall be at the residence of the real or beneficial owner and not at the residence of a trustee having custody or possession thereof. The remainder of the income received by such nonresident shall be deemed nontaxable by this state."</p>
	<p>103 KAR 17:060 "Section 4. Taxation of Nonresidents. (1) Any net income of a nonresident shall be subject to Kentucky income tax if it is derived from services performed in Kentucky, from property located in Kentucky, or from income received from a pass-through entity doing business in Kentucky. Income from sources outside Kentucky shall not be subject to Kentucky income tax. Losses incurred outside Kentucky shall not be deductible in computing Kentucky adjusted gross income."</p>
	<p>KRS 141.120:</p>

103 KAR 19:010: "Section 5. Income from Kentucky Sources. Income from Kentucky sources shall include income arising from all: (1) Activities carried on in this state, including labor performed or business done in this state; (2) Services performed in this state; (3) Real or tangible property located in this state; or (4) Intangible property that has acquired a business situs in this state.

Section 6. Nonresident Estate or Trust. A nonresident estate with gross income for the taxable year from Kentucky sources of \$1,200 or more and a nonresident trust with gross income for the taxable year from Kentucky sources of \$100 or more shall pay tax on all taxable income from Kentucky sources, except that portion of net income distributable or distributed during the taxable year and that portion of the net income from intangible personal property attributable to a nonresident beneficiary.

Section 7. Nonresident Beneficiaries. Nonresident beneficiaries shall pay tax on income derived from Kentucky sources."

Kentucky Department of Revenue

Louisiana (6.0%)
Trust Residency
Factors: testator, law

LA Rev Stat § 47:300.10: "(3)(a) **“Resident trust”** means a trust or a portion of a trust created by last will and testament of a decedent who at his death was domiciled in this state.
(b) A trust other than a trust described in Subparagraph (3)(a) shall be considered a resident trust if the trust instrument provides that the trust shall be governed by the laws of the state of Louisiana. If the trust instrument provides that the trust is governed by the laws of any state other than the state of Louisiana, then the trust shall not be considered a resident trust. If the trust instrument is silent with regard to the designation of the governing law, then the trust shall be considered a resident trust only if the trust is administered in this state.
(4) "Nonresident estate" and "nonresident trust" means any estate or trust that is not considered a resident estate or a resident trust as defined in this Section."

LA Rev Stat § 47:300.3 "Residents and nonresidents
The tax imposed by R.S. 47:300.1 upon the income of estates or trusts shall apply to residents and nonresidents as follows:
(1) Resident estates or trusts are subject to the tax upon income from whatever source derived.
(2) Nonresident estates or trusts are subject to the tax upon the income earned within or derived from sources within this state. Income earned within or derived from sources within this state means income allocated and apportioned to Louisiana pursuant to R.S. 47:241 through 247.***

LA Rev Stat § 47:181 Imposition of tax on estates and trusts
A. Application of tax. The taxes imposed by this Chapter upon individuals shall apply to the income of estates or of any kind of property held in trust including:
(1) Income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and incomes accumulated or held for future distribution under the terms of will or trust;
(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a tutor of a minor which is to be held or distributed as the court may direct;
(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and
(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.
B. Computation and payment.
(1) The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in R.S. 47:186, relating to revocable trusts, and R.S. 47:187 relating to income for benefit of the grantor. For return made by the beneficiary see R.S. 47:162.***

LA Rev Stat § 47:300.7: Louisiana taxable income of nonresident estate or trust

A. Definition. "Louisiana taxable income" of a nonresident estate or trust means such portion of the taxable income of the nonresident estate or trust determined in accordance with federal law for the same taxable year, as specifically modified by the provisions contained in Subsection C of this Section, that was earned within or derived from sources within this state, less a federal income tax deduction to be computed following the provisions of R.S. 47:287.83 and 287.85.

B. Computation. Louisiana taxable income of a nonresident estate or trust for a taxable year is computed by applying the allocation and apportionment provisions of R.S. 47:241 through 247 to the estate's or trust's federal taxable income for the same taxable year as specifically modified by Subsection C of this Section.***

LA Rev Stat § 47:243 Computation of net allocable income from Louisiana sources

A. Items of gross allocable income shall be allocated directly to the states from which such items of income are derived, as follows:

(1) Rents and royalties from immovable or corporeal movable property, and profits from sales and exchanges of capital assets consisting of immovable or corporeal movable property, shall be allocated to the state where such property is located at the time the income is derived.

(2) Interest on customers' notes and accounts shall be allocated to the state in which such customers are located.

(3) Profits from sales or exchanges not made in the regular course of business, of property, other than capital assets consisting of incorporeal property or rights, shall be allocated to the state where such property is located at the time of the sale. A mineral lease, royalty interest, oil payment or other mineral interest shall be located in the state in which the property subject to such mineral interest is situated.

(4) Other interest, dividends and profits from sales and exchanges of capital assets consisting of incorporeal property or rights shall be allocated to the state in which the securities or credits producing such income have their situs, which shall be at the business situs of such securities or credits if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the legal domicile of the taxpayer in the case of an individual or at the commercial domicile of the taxpayer in the case of a corporation; provided that dividends upon stock having a situs in Louisiana received by a corporation from another corporation which is controlled by the former, through ownership of fifty percent or more of the voting stock of the latter, shall be allocated to the state or states in which is earned the income from which the dividends are paid, such allocation to be made in proportion to the respective amounts of such income earned in each state; and provided, further, that interest on securities and credits having a situs in Louisiana received by a corporation from another corporation which is controlled by the former through ownership of fifty percent or more of the voting stock of the latter, shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located, on the basis of the ratio of the value of such property located in Louisiana to the total value of such property within and without the state.

(5) Royalties or similar revenue from the use of patents, trademarks, copyrights, secret processes and other similar intangible rights shall be allocated to the state or states in which such rights are used.

(6) Estates, trusts and partnerships having a non-resident individual or a corporation as a member or beneficiary shall allocate and apportion their income within and without this state in accordance with the processes and formulas prescribed in this Part, and the share of any such non-resident or corporation member or beneficiary in the net income from sources in this state as so computed, shall be allocated to this state in the return of such member or beneficiary.

Louisiana Department of Revenue website

Maine (7.95%)
(rates changed to
7.15% top rate in
2018)

36 ME Rev Stat § 5102(4): "Resident estate or trust. "Resident estate or trust" shall mean:

- A. The estate of a decedent who at his death was domiciled in this State;
- B. A trust created by will of a decedent who at death was domiciled in this State; or
- C. A trust created by, or consisting of property of, a person domiciled in this State."**

Trust Residency Factors: testator, settlor	<p>36 ME Rev. Stat. § 5142. Adjusted gross income from sources in this State ***** 3. Intangibles. Income from intangible personal property including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from sources within this State only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this State. 3-A. Gain or loss on sale of partnership interest. Notwithstanding subsection 3, the gain or loss on the sale of a partnership interest is sourced to this State in an amount equal to the gain or loss multiplied by the ratio obtained by dividing the original cost of partnership tangible property located in Maine by the original cost of partnership tangible property everywhere, determined at the time of the sale. Tangible property includes property owned or rented and is valued in accordance with section 5211, subsection 10. If more than 50% of the value of the partnership's assets consist of intangible property, gain or loss from the sale of the partnership interest is sourced to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.***</p>
	<p>Maine Revenue Services website</p>
Maryland (5.75%) Trust residency factors: testator, settlor, administration	<p>MD Tax-Gen Code § 10-101(k)(1): "Resident" means***</p>
	<p>(iii) a fiduciary, other than a personal representative, of a trust if:</p> <ol style="list-style-type: none"> 1. the trust was created, or consists of property transferred, by the will of a decedent who was domiciled in the State on the date of the decedent's death; 2. the creator or grantor of the trust is a current resident of the State; [presumably this precludes application after a settlor has died], or 3. the trust is principally administered in the State. <p>Maryland Income Tax Administrative Release No. 16: Subject: Subject: Fiduciaries, Including Estates and Trusts "B. Who is a Resident Fiduciary?" Chapter 1 of the Acts of 1992 clarified and broadened the rules for determining who is a resident fiduciary. See § 10-101 of the Tax-General Article of the Annotated Code of Maryland.</p> <ol style="list-style-type: none"> 1. Personal Representative of an Estate. <p>A fiduciary who is a personal representative of an estate is considered a resident of Maryland if the decedent was domiciled in this State on the date of the decedent's death.</p> <ol style="list-style-type: none"> 2. A Fiduciary Other than a Personal Representative. <p>A fiduciary, other than a personal representative, is considered a resident of Maryland if:</p> <ol style="list-style-type: none"> a. The trust was created, or consists of property transferred, by the will of a decedent who was domiciled in this State on the date of the decedent's death; b. The creator or grantor of the trust is a current resident of this State; or c. The trust is principally administered in this State."
Source Income: not a UDITPA or MSP state, see divergent analysis	<p>Maryland Income Tax Administrative Release No. 6: Subject: Taxation of Pass-through Entities Having Nonresident Members, page 2:</p> <p>"The pass-through entity's nonresident taxable income includes any income derived from real or tangible personal property in Maryland, any income from business that is in part or wholly carried on in Maryland, any income derived from an occupation, profession or trade carried on in part or wholly in Maryland, and any income derived from Maryland wagering. This includes any income derived from the sale or other disposition of an ownership interest in a pass-through entity where the pass-through entity owns real or personal property in Maryland or conducts a business in Maryland."</p>

Despite the administrative guidance above, Maryland's statute and administrative code are quite vague on the issue of sales of intangible pass through entities, see Code of Maryland Regulations 03.04.02.06(C): "Subtractions from Federal Adjusted Gross Income. To the extent included in computing federal adjusted gross income, the following are subtracted from the federal adjusted gross income of a nonresident individual to determine Maryland adjusted gross income:

(1) Income derived from:

- (d) That part of a business, occupation, profession, or trade carried on by the individual both within and without this State that is attributable to the business, occupation, profession, or trade carried on outside this State;
- (e) A pass-through entity that is equal to the member's distributive or pro rata share attributable to the business carried on outside this State;
- (f) Annuities, pensions, state and local income tax refunds, interest, dividends, or other intangible property except if from:
 - (i) Maryland State lottery prizes or other gambling winnings derived from this State; or
 - (ii) A business, occupation, profession, or trade carried on by the individual in this State;

Comptroller of Maryland website

Massachusetts (5.2%, 5.1% for 2018, 5.05% for 2019 and 5% for 2020). 12% for certain short term capital gains.

Trust residency factors:
testator, settlor, fiduciary

830 CMR 62.10.1 "(a) Testamentary Trusts. Trusts created under the will of a person who died a resident of Massachusetts are subject to the taxing jurisdiction of Massachusetts with respect to all of their taxable income from whatever source derived. Trusts created under the will of a person who died a resident of any other state or foreign country are subject to the taxing jurisdiction of Massachusetts only to the extent of income derived by the trustee (regardless of his residence) from the carrying on of a profession, trade or business within Massachusetts.

(b) Trusts Inter Vivos. Inter vivos or "living trusts" which are created by a grantor during his lifetime are classified in these Regulations as either "Resident Inter Vivos Trusts" or "Non-Resident Inter Vivos Trusts". The description of these categories and the conditions under which each category is subject to the taxing jurisdiction of Massachusetts are set out in 830 CMR 62.10.1(1)(b)1.

1. Resident Inter Vivos Trusts. To be subject to the taxing jurisdiction of Massachusetts as a "Resident Inter Vivos Trust" at least one trustee must be a resident of Massachusetts and in addition at least one of the following conditions must exist:

- a. At the time of the creation of the trust the grantor (or any one of several grantors) was a resident of Massachusetts. The "time of the creation of the trust" will ordinarily be the time when a declaration of trust has been made and property delivered by the grantor to the trustee.**
- b. During any part of the year for which income is computed the grantor (or any one of several grantors) resided in Massachusetts.**
- c. The grantor (or any one of several grantors) died a resident of Massachusetts.**

2. Non-Resident Trusts. A "Non-Resident Inter Vivos Trust" is any inter vivos trust which is not a "Resident Inter Vivos Trust". Such a trust is subject to the taxing jurisdiction of Massachusetts only to the extent of income derived by the Trustee from the carrying on of a profession, trade or business within Massachusetts. The residence outside of Massachusetts of the grantor, any trustee or any beneficiary, or any or all of such persons, will not remove such a trust from the taxing jurisdiction of Massachusetts.

Source Income: not a UDITPA or MSP state, see divergent analysis	<p>830 CMR 62.5A.1(c)(8) outlines source income rules, with a stark difference between the sale of stock v. sale of other entities: "8. Sale of a Business or an Interest in a Business. Income from a trade or business may include income that results from the sale of a business or an interest in a business. This rule generally applies to the sale of an interest in a sole proprietorship, general partnership, limited liability partnership, a general or limited partner's interest in a limited partnership (subject to the exception in the following sentence), or an interest in a limited liability company. It generally does not apply to the sale of a limited partner's interest in a publicly traded limited partnership, or to the sale of shares of stock in a C or S corporation, to the extent that the income from such gain is characterized for federal income tax purposes as capital gains. Nevertheless, gain from the disposition of a limited partner's interest in a publicly traded limited partnership or the disposition of shares of corporate stock will be considered Massachusetts source income if it is treated as compensation for federal income tax purposes. Such gain may also give rise to Massachusetts source income if, for example, the gain is otherwise connected with the taxpayer's conduct of a trade or business, including employment (as in a case where the stock is related to the taxpayer's compensation for services) or if the organizational form of a business is changed in anticipation of the disposition of one or more interests therein for the purpose of avoiding Massachusetts tax. Depending on the facts and circumstances of the case, gain from the sale of such corporate stock or limited partner's interest in a publicly traded limited partnership will be taxable to non-residents if it is determined that the taxpayer has engaged in a transaction or multiple transactions, the purpose of which is the avoidance of tax upon the gain (e.g. sham or step transaction, or prohibited assignment of income).</p>
	<p>Massachusetts Department of Revenue website</p>
Michigan (4.25%) Trust residency factors: testator, settlor. By case law and administrative ruling, trustee, assets, administration, beneficiary	<p>MI Comp L § 206.18 Resident and domicile; definitions.</p> <p>(1) "Resident" means:</p> <p>(a) An individual domiciled in the state. "Domicile" means a place where a person has his true, fixed and permanent home and principal establishment to which, whenever absent therefrom he intends to return, and domicile continues until another permanent establishment is established. If an individual during the taxable year being a resident becomes a nonresident or vice versa, taxable income shall be determined separately for income in each status. If an individual lives in this state at least 183 days during the tax year or more than 1/2 the days during a taxable year of less than 12 months he shall be deemed a resident individual domiciled in this state.</p> <p>(b) The estate of a decedent who at his death was domiciled in this state.</p> <p>(c) Any trust created by will of a decedent who at his death was domiciled in this state and any trust created by, or consisting of property of, a person domiciled in this state, at the time the trust becomes irrevocable. [see below for case/ruling modifications of this]</p>
	<p><i>Blue v Michigan Department of Treasury</i>, 185 Mich App 406; 462 NW2d 762 (1990), discussed in material.</p> <p>Recently released Michigan Department of Treasury Revenue Administrative Bulletin 2015-15 clarifies that it will follow Blue case and states that:</p> <p>"In addition, a trust that meets the definition of a resident trust may nonetheless become a nonresident trust if all the following are true: the trustee is not a Michigan resident; the trust assets are not held, located or administered in Michigan, and; all of the beneficiaries are nonresidents."</p>

Source income: UDITPA, MSP	<p>MI Comp L § 206.112 Capital gains and losses.</p> <p>"(1) Capital gains and losses from sales or exchanges of real property located in this state are allocable to this state.</p> <p>(2) Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if:</p> <p>(a) The property had a situs in this state at the time of the sale; or</p> <p>(b) The taxpayer is a resident partnership, estate or trust or individual of this state or has a commercial domicile in this state and the taxpayer is not taxable in the state in which the property had a situs.</p> <p>(3) Capital gains and losses from sales or exchanges of intangible personal property are allocable to this state if the taxpayer is a resident partnership, estate or trust or individual of this state or has a commercial domicile in this state."</p>
	<p>Michigan Department of Treasury website</p>
Minnesota (9.85%) Trust residency factors: testator, settlor, administration, other, but see <i>Fielding</i> case and articles cited below	<p>MN Stat § 290.01</p> <p>***</p> <p>Subd. 3a. Trust.</p> <p>The term "trust" has the meaning provided under the Internal Revenue Code, and also means designated settlement fund as defined in and taxed federally under section 468B of the Internal Revenue Code.***</p> <p>Subd. 7b. Resident trust.</p> <p>(a) Resident trust means a trust, except a grantor type trust, which either (1) was created by a will of a decedent who at death was domiciled in this state or (2) is an irrevocable trust, the grantor of which was domiciled in this state at the time the trust became irrevocable. For the purpose of this subdivision, a trust is considered irrevocable to the extent the grantor is not treated as the owner thereof under sections 671 to 678 of the Internal Revenue Code. The term "grantor type trust" means a trust where the income or gains of the trust are taxable to the grantor or others treated as substantial owners under sections 671 to 678 of the Internal Revenue Code. This paragraph applies to trusts, except grantor type trusts, that became irrevocable after December 31, 1995, or are first administered in Minnesota after December 31, 1995.</p> <p>(b) This paragraph applies to trusts, except grantor type trusts, that are not governed under paragraph (a). A trust, except a grantor type trust, is a resident trust only if two or more of the following conditions are satisfied:</p> <p class="list-item-l1">(i) a majority of the discretionary decisions of the trustees relative to the investment of trust assets are made in Minnesota;</p> <p class="list-item-l1">(ii) a majority of the discretionary decisions of the trustees relative to the distributions of trust income and principal are made in Minnesota;</p> <p class="list-item-l1">(iii) the official books and records of the trust, consisting of the original minutes of trustee meetings and the original trust instruments, are located in Minnesota.</p> <p>(c) For purposes of paragraph (b), if the trustees delegate decisions and actions to an agent or custodian, the actions and decisions of the agent or custodian must not be taken into account in determining whether the trust is administered in Minnesota, if:</p> <p class="list-item-l1">(i) the delegation was permitted under the trust agreement;</p> <p class="list-item-l1">(ii) the trustees retain the power to revoke the delegation on reasonable notice; and</p> <p class="list-item-l1">(iii) the trustees monitor and evaluate the performance of the agent or custodian on a regular basis as is reasonably determined by the trustees.</p> <p>Subd. 8. Fiduciary.</p> <p>The term "fiduciary" means a guardian, trustee, receiver, conservator, personal representative, or any person acting in any fiduciary capacity for any person or corporation.</p>

<p>Source Income: MN is a UDITPA state, though see variation in bold, also see discussion in <i>Fielding</i> case and article</p>	<p>MN Stat § 290.17 GROSS INCOME, ALLOCATION TO STATE Subdivision 1. Scope of allocation rules. (a) The income of resident individuals is not subject to allocation outside this state. The allocation rules apply to nonresident individuals, estates, trusts, nonresident partners of partnerships, nonresident shareholders of corporations treated as "S" corporations under section 290.9725, and all corporations not having such an election in effect.</p> <p>*****(c) Income or gains from intangible personal property not employed in the business of the recipient of the income or gains must be assigned to this state if the recipient of the income or gains is a resident of this state or is a resident trust or estate. Gain on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in this state to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than 50 percent of the value of the partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. Gain on the sale of an interest in a single member limited liability company that is disregarded for federal income tax purposes is allocable to this state as if the single member limited liability company did not exist and the assets of the limited liability company are personally owned by the sole member. Gain on the sale of goodwill or income from a covenant not to compete that is connected with a business operating all or partially in Minnesota is allocated to this state to the extent that the income from the business in the year preceding the year of sale was assignable to Minnesota under subdivision 3. When an employer pays an employee for a covenant not to compete, the income allocated to this state is in the ratio of the employee's service in Minnesota in the calendar year preceding leaving the employment of the employer over the total services performed by the employee for the employer in that year.</p>
	<p><i>William Fielding, Trustee of the Reid and Ann MacDonald Irrevocable GST Trust for Maria V. MacDonald v. Commissioner of Revenue</i> - Minnesota Supreme Court case. The Minnesota Department of Revenue has appealed this decision to the U.S. Supreme Court, but as of June 21, 2019, the U.S. Supreme Court has not yet granted cert.</p>
	<p><i>Ed Morrow, David Berek, and Raj Malviya on the Minnesota Supreme Court's Affirmation of Fielding and Its Impact on Minnesota's and Other States' Abilities to Tax Trust Income</i>. LISI Income Tax Planning Newsletter #156 (Oct 4, 2018)</p>
	<p>Minnesota Department of Revenue website</p>

<p>Mississippi (5.0%) Trust residency factors: administration</p> <p>Source</p> <p>Income: MS is not a UDITPA state, but has a similar rule</p>	<p>From Mississippi Fiduciary Tax Return Instructions, page 3: "Resident Estate or Trust The fiduciary of a resident estate or trust must file a Mississippi fiduciary return (Form 81-110) if the estate or trust had any taxable income.</p> <p>Non-resident Estate or Trust The fiduciary of a non-resident estate or trust must file a Mississippi fiduciary return (Form 81-110) if the estate or trust had taxable income or gain derived from Mississippi sources.</p> <p>Definitions A resident estate is the estate of a person who was a Mississippi resident at the time of death. All other estates are nonresident estates.</p> <p>A resident trust is any trust which is administered by the trustee in Mississippi. A trust being administered outside of Mississippi shall not be considered a resident trust merely because the governing instrument or a law requires that the laws of Mississippi be followed with respect to interpretation or administration of the trust. All other trusts are non-resident trusts.</p> <p>Income from Mississippi sources includes income or gain from:</p> <ol style="list-style-type: none"> Real or tangible personal property located in Mississippi; A business, profession or occupation carried on within Mississippi; or Services performed within Mississippi. <p>For a nonresident estate or trust, income from the following is not considered to be derived from Mississippi sources: annuities, interest, dividends, or gains from the sale or exchange of intangible personal property, unless it is part of the income from a business, trade, profession, or occupation that is carried on within Mississippi."</p>
	<p>MS Code § 27-7-23 "****b) Nonresident individuals, partnerships, trusts and estates. (1) The tax imposed by this article shall apply to the entire net income of a taxable nonresident derived from employment, trade, business, professional, personal service or other activity for financial gain or profit, performed or carried on within Mississippi, including the rental of real or personal property located within this state or for use herein and including the sale or exchange or other disposition of tangible or intangible property having a situs in Mississippi."</p>
	<p>Mississippi Department of Revenue website</p> <p>Missouri (6.0%, top rate 5.9% as of 2018, 5.4% for 2019) Trust residency factors: testator, settlor, beneficiary</p> <p>MO Rev. Stat. §143.331. A "resident estate or trust" means:</p> <p>(1) The estate of a decedent who at his or her death was domiciled in this state;</p> <p>(2) A trust that:</p> <p>(a) Was created by will of a decedent who at his or her death was domiciled in this state; and</p> <p>(b) Has at least one income beneficiary who, on the last day of the taxable year, was a resident of this state; or</p> <p>(3) A trust that:</p> <p>(a) Was created by, or consisting of property of, a person domiciled in this state on the date the trust or portion of the trust became irrevocable; and</p> <p>(b) Has at least one income beneficiary who, on the last day of the taxable year, was a resident of this state.</p> <p>MO Rev. Stat. §143.061. Fiduciaries. — A tax is hereby imposed upon the Missouri taxable income of fiduciaries at the same rates as applicable to resident individuals.</p>

Source income: UDITPA, MSP	<p>MO Rev Stat § 143.181 ***2. Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to:</p> <ol style="list-style-type: none"> (1) The ownership or disposition of any interest in real or tangible personal property in this state; (2) A business, trade, profession, or occupation carried on in this state; <p>***</p> <p>3. Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from sources within this state only to the extent that such income is from:</p> <p>(1) Property employed in a business, trade, profession, or occupation carried on in this state;***"</p>
	<p>Missouri Department of Revenue website</p>
Montana (6.9%) Trust residency factors: testator, settlor, assets, beneficiary, fiduciary, administration, other	<p>From Montana FID-3 Fiduciary Income Tax Return Instructions (page 15):</p> <p>"2) Is the estate or trust a resident of Montana?</p> <p>Resident Estate</p> <p>An estate is a resident estate if the decedent was a Montana resident on the date of his or her death. If the estate is a bankruptcy estate, it is treated as a resident estate if the person for whom the estate was created is a Montana resident.</p> <p>Resident Trust</p> <p>A trust is a resident trust if it establishes a sufficient connection to Montana.</p> <p>Several factors are considered to determine whether a trust has a sufficient connection to Montana and include, but are not limited to, the testator's, grantor's, settlor's, or creator's domicile; the location where the trust was created; the location of trust property; the beneficiaries' domicile; the trustees' domicile; and the location of the trust's administration.</p> <p>Examples of resident trusts include, but are not limited to:</p> <ul style="list-style-type: none"> ●● any trust that designates Montana as its principal place of administration; ●● any trust that is primarily administered by a trustee or representative who is a Montana resident or whose principal place of business is located in Montana; ●● any irrevocable trust created by, or consisting of property of, a Montana resident on the date the trust or portion of the trust became irrevocable and has at least one income beneficiary who, for all or some portion of the trust's current taxable year, was a Montana resident; ●● any trust created by the will of a decedent who was a Montana resident at the time of the decedent's death; or ●● any trust created by, or caused to be created by, a court as a result of the death of an individual when: <ul style="list-style-type: none"> ○○ property was transferred to an irrevocable inter vivos trust as a result of a decedent's death; ○○ the decedent was a Montana resident at the time of the decedent's death; and ○○ the trust has at least one income beneficiary who, for all or some of the trust's current taxable year, was a Montana resident."
	<p>From Mt Code §72-38-103:(14) (a) "Principal place of administration" means the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust unless otherwise designated by the terms of the trust as provided in 72-38-108.</p> <p>(b) If the principal place of administration of the trust cannot be determined under subsection (14)(a), then it must be determined as follows: (i) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or (ii) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.</p>

From Montana Administrative Rule 42.30.101: "(16) "Resident trust" means any trust that establishes a sufficient connection to Montana. Factors that may be considered to determine whether a trust established sufficient connection to Montana include, but are not limited to, the testator's, grantor's, settlor's, or creator's domicile; the location where the trust was created; the location of trust property; the beneficiaries' domicile; the trustees' domicile; and the location of the trust's administration. Examples of resident trusts include, but are not limited to:

- (a) any trust that designates Montana as its principal place of administration, as defined in 72-38-103 and 72-38-108, MCA;
- (b) any trust that is primarily administered by a trustee or representative who is a Montana resident or whose principal place of business is located in Montana;
- (c) any irrevocable trust created by, or consisting of property of, a Montana resident on the date the trust or portion of the trust became irrevocable and has at least one income beneficiary who, for all or some portion of the trust's current taxable year, was a Montana resident;
- (d) any trust created by the will of a decedent who was a Montana resident at the time of the decedent's death; or
- (e) any trust created by, or caused to be created by, a court as a result of the death of an individual when:
 - (i) property was transferred to an irrevocable inter vivos trust as a result of a decedent's death;
 - (ii) the decedent was a Montana resident at the time of the decedent's death; and
 - (iii) the trust has at least one income beneficiary who, for all or some of the trust's current taxable year, was a Montana resident."

MT Code § 15-30-2152

MT Code § 15-30-2151

Source Income: UDITPA	<p>MT Code § 15-30-2101: "(18) (a) "Montana source income" means: *****(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;*** (xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751, multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment factor as provided in this subsection (18)(a)(xvii) does not fairly and equitably represent the nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the department may require with respect to any and all of the partnership interest, the employment of another method to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection (18)(a)(xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are afforded the same rights under 15-1-601 and 15-31-312."</p>
Nebraska (6.84%) Trust residency factors: settlor, testator	<p>NE Code § 77-2714.01(6) "Resident estate or trust shall mean (a) the estate of a decedent who at his or her death was domiciled in this state, (b) a trust or portion of a trust consisting of property transferred by the will of a decedent who at his or her death was domiciled in this state, or (c) a trust or portion of a trust consisting of the property of an individual domiciled in this state at the time such individual may no longer exercise the power to revest title to such property in himself or herself;"</p>

Source Income: not a UDITPA state but substantially similar	<p>NE Code § 77-2733</p> <p>Income tax; nonresident; income in Nebraska; method of determination of tax; exception.</p> <p>(1) The income of a nonresident individual derived from sources within this state shall be the sum of the following:</p> <p>(a) The net amount of items of income, gain, loss, and deduction entering into his or her federal taxable income which are derived from or connected with sources in this state including (i) his or her distributive share of partnership income and deductions determined under section 77-2729, (ii) his or her share of small business corporation or limited liability company income determined under section 77-2734.01, and (iii) his or her share of estate or trust income and deductions determined under section 77-2725; and</p> <p>(b) The portion of the modifications described in section 77-2716 which relates to income derived from sources in this state, including any modifications attributable to him or her as a partner.</p> <p>(2) Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to:</p> <p>(a) The ownership or disposition of any interest in real or tangible personal property in this state;</p> <p>(b) A business, trade, profession, or occupation carried on in this state; and</p> <p>(c) Any lottery prize awarded in a lottery game conducted pursuant to the State Lottery Act.</p> <p>(3) Income from intangible personal property including annuities, dividends, interest, and gains from the disposition of intangible personal property shall constitute income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.***"</p>
	Nebraska Department of Revenue website
Nevada (0%)	No income tax. Note, however, new Nevada Commerce Tax on businesses making over \$4 million in gross revenue, information at http://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Commerce_Tax_FAQs.pdf
	Nevada Department of Taxation
New Hampshire (5%, 0% trusts)	No income tax imposed on non-grantor trusts for tax periods after Dec. 31, 2013. New Hampshire does not tax all income of its residents, but has a 5% tax on interest and dividends.
	New Hampshire Technical Information Release TIR 2014-002 Dated April 3, 2014 explaining changes effective after Dec 31, 2013 for taxation of trusts and estates in NH
	New Hampshire Department of Revenue Administration website

<p>New Jersey (8.97%, however, new budget deal in July 2018 promises new top rate for income above \$5 million at 10.75%)</p> <p>Trust residency factors: testator, settlor, but see further discussion below, assets and fiduciary are de facto factors</p>	<p>NJ Rev. Stat. §§ 54A:1-2(o)-(p):</p> <p>"o. Resident estate or trust. A resident estate or trust means:</p> <p>(1) The estate of a decedent who at his death was domiciled in this State,</p> <p>(2) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this State, or</p> <p>(3) A trust, or portion of a trust, consisting of the property of:</p> <p>(a) A person domiciled in this State at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or</p> <p>(b) A person domiciled in this State at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.</p> <p>For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.</p> <p>p. Nonresident estate or trust. A nonresident estate or trust means an estate or trust which is not a resident."</p>
	<p>Link to <i>Residuary Trust A u/w/o Kassner</i> case discussed in material</p>
	<p>From NJ Division of Taxation Tax Topic Bulletin GIT-12: "New Jersey Tax Nexus"</p> <p>A resident estate or trust does not have sufficient nexus with New Jersey and is not subject to New Jersey tax if it:</p> <p><input type="checkbox"/> Does not have any tangible assets in New Jersey; and</p> <p><input type="checkbox"/> Does not have any income from New Jersey sources; and</p> <p><input type="checkbox"/> Does not have any trustees or executors in New Jersey.</p> <p>The fiduciary of an estate or trust that meets all of the above requirements must file Form NJ-1041, check the box on Line 26, and include a statement certifying that the estate or trust is not subject to tax.</p> <p>An institutional trustee has New Jersey tax nexus if the institution conducts business in offices located in New Jersey, even if the office administering the estate or trust is located outside New Jersey." For tips on getting around the "peppercorn source income" taint, see article on NY state income tax linked to in the introduction to this chart.</p>
<p>Source Income: NJ is not a UDITPA state but has similar rule, follows MSP</p>	<p>N.J.A.C. § 18:35-1.5 S corporations and S corporation shareholders *** (m) A shareholder reports the disposition of S corporation stock as follows:</p> <ol style="list-style-type: none"> 1. A shareholder's disposition of S corporation stock must be reported in the category "net gains or income from the disposition of property." The shareholder calculates New Jersey net gain or loss from the disposition by subtracting the prior year's unused pro rata share of losses and the New Jersey adjusted basis in the stock, as defined under (h) above, from the liquidating distribution. 2. When a shareholder disposes of some, but not all, of his or her stock, the New Jersey adjusted basis in the stock and the prior year's unused pro rata share of losses must be prorated based on the portion of stock that was sold and the result subtracted from the sale proceeds. 3. If a shareholder reports the stock sale as an installment sale for Federal income tax purposes, the shareholder must also report the New Jersey gain from the sale under the installment method. The New Jersey installment sale income must be determined under applicable Federal rules and procedures and using the New Jersey adjusted basis and prior year unused pro rata share of losses. If the stock sale results in a New Jersey loss, the full loss is reported in the year the transaction occurred. 4. A nonresident shareholder must follow the resident shareholder procedures to determine the "net gains or income from the disposition of property" everywhere. <p>The gain or loss from a disposition of S corporation stock is not New Jersey source income for a nonresident.</p>

	<p>From N.J. Tax Department publication "S Corporation Questions and Answers": "15. If a nonresident shareholder sells New Jersey S corporation shares, what is his gain? Does he pay tax on the gain?"</p> <p>A nonresident shareholder will not have a gain or loss under N.J.S.A. 54A:5-1(c). The sale or disposition of S corporation stock is a transaction involving an intangible asset which is not taxable for a nonresident for gross income tax purposes under N.J.S.A. 54A:5-8. If, however, the nonresident has income from other New Jersey sources in the year he sells his New Jersey S corporation stock, he must calculate his gain from the sale as if he were a resident and include the gain in his income from all sources in Column A on Form NJ-1040NR."</p>
	<p>From NJ Division of Taxation Bulletin GIT-9P: QUESTION 7 How do I determine the gain (loss) from the sale of my partnership interest?</p> <p>***</p> <p>Nonresidents</p> <p>If you were a nonresident at the time you disposed of your partnership interest, do not include the gain (loss) from the disposition of your partnership interest in your income from New Jersey sources in Column B, Form NJ-1040NR. However, if you had other types of income from New Jersey sources in the year of disposition and are required to file a New Jersey nonresident return, the gain (loss) from the disposition of your partnership interest must be calculated as if you were a New Jersey resident and included as "Net gains or income from disposition of property" in Column A, Form NJ-1040NR.</p>
	New Jersey Department of the Treasury, Division of Taxation website
New Mexico (4.9%) Trust residency factors: administration, fiduciary	<p>NM Stat. §7-2-2:</p> <p>I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;</p> <p>S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;</p> <p>From New Mexico Tax Dept Form FID-1 Fiduciary Income Tax Return Instructions: FIDUCIARIES REQUIRED TO FILE A NEW MEXICO RETURN</p> <p>Every fiduciary who is required to file a U.S. fiduciary income tax return (federal Form 1041), except a fiduciary of a grantor trust who is required to file federal Form 1041 under the provisions of federal regulation 1.671-4(a), must file a FID-1, New Mexico Fiduciary Income Tax Return, if any of the following is true:</p> <ul style="list-style-type: none"> • The trust is a "resident" of New Mexico. • The estate is of a decedent who was a resident of New Mexico. • The trust or estate has income from: <ul style="list-style-type: none"> a. A transaction of business in, into, or from New Mexico; or b. Property in New Mexico; or c. Compensation in New Mexico. <p>An estate is DOMICILED IN NEW MEXICO if the decedent was domiciled in New Mexico. A trust is DOMICILED IN NEW MEXICO if the trustee is domiciled in New Mexico, or if the principal place from which the trust is managed or administered is in New Mexico.</p>
	<p>New Mexico Administrative Code 3.3.3.7: DEFINITIONS: "Nonresident trust" defined. A trust is a nonresident trust if the trustee responsible for the trust funds and for distributions from the fund is a resident of another state. A nonresident trust is subject to New Mexico income tax to the extent that it is engaged in the transaction of business in, into or from this state or is deriving income from any property located in this state. The presence of beneficiaries of the trust in New Mexico, alone, will not cause a tax liability to become due from the trust based on the activities of the trust. Beneficiaries who are residents of this state will incur a tax liability on their share of distributions from the trust to the extent that such distributions are subject to income taxation under the provisions of the Internal Revenue Code.</p>

Source Income: NM is a UDITPA state	<p>NM Stat § 7-4-7 Allocation of capital gains and losses.</p> <p>A. Capital gains and losses from sales of real property located in this state are allocable to this state.</p> <p>B. Capital gains and losses from sales of tangible personal property are allocable to this state if:</p> <p>(1) the property had a situs in this state at the time of the sale; or</p> <p>(2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.</p> <p>C. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.</p>
New York State (8.82%) Trust residency factors: testator, settlor, but see exceptions for exempt resident trusts where fiduciary, assets are also relevant factors	<p>N.Y. Tax Law § 605(b)(3): Resident estate or trust. A resident estate or trust means:</p> <p>(A) the estate of a decedent who at his death was domiciled in this state,</p> <p>(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state, or</p> <p>(C) a trust, or portion of a trust, consisting of the property of:</p> <p>(i) a person domiciled in this state at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or</p> <p>(ii) a person domiciled in this state at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.</p> <p>(D) (i) Provided, however, a resident trust is not subject to tax under this article if all of the following conditions are satisfied:</p> <p>(I) all the trustees are domiciled in a state other than New York;</p> <p>(II) the entire corpus of the trusts, including real and tangible property, is located outside the state of New York; and</p> <p>(III) all income and gains of the trust are derived from or connected with sources outside of the state of New York, determined as if the trust were a non-resident trust.</p> <p>(ii) For purposes of item (II) of clause (i) of this subparagraph, intangible property shall be located in this state if one or more of the trustees are domiciled in the state of New York.</p>
	LISI article "The Use of Non-Grantor Trusts for State and Federal Income Tax Planning in New York in Light of NY and Federal Tax Reform"

New legislation passed in 2014 affecting DINGs and other non-grantor trusts:

NY Tax L § 612

(40) in the case of a beneficiary of a trust that, in any tax year after its creation including its first tax year, was not subject to tax pursuant to subparagraph (D) of paragraph three of subsection (b) of section six hundred five of this article (except for an incomplete gift non-grantor trust, as defined by paragraph forty-one of this subsection), the amount described in the first sentence of section six hundred sixty-seven of the internal revenue code for the tax year to the extent not already included in federal gross income for the tax year, except that, in computing the amount to be added under this paragraph, such beneficiary shall disregard (i) subsection (c) of section six hundred sixty-five of the internal revenue code; (ii) the income earned by such trust in any tax year in which the trust was subject to tax under this article; and (iii) the income earned by such trust in a taxable year prior to when the beneficiary first became a resident of the state or in any taxable year starting before January first, two thousand fourteen. Except as otherwise provided in this paragraph, all of the provisions of the internal revenue code that are relevant to computing the amount described in the first sentence of subsection (a) of section six hundred sixty-seven of the internal revenue code shall apply to the provisions of this paragraph with the same force and effect as if the language of those internal revenue code provisions had been incorporated in full into this paragraph, except to the extent that any such provision is either inconsistent with or not relevant to this paragraph.

§ 2. Subsection (b) of section 612 of the tax law is amended by adding a new paragraph 41 to read as follows:

(41) In the case of a taxpayer who transferred property to an incomplete gift non-grantor trust, the income of the trust, less any deductions of the trust, to the extent such income and deductions of such trust would be taken into account in computing the taxpayer's federal taxable income if such trust in its entirety were treated as a grantor trust for federal tax purposes. For purposes of this paragraph, an "incomplete gift non-grantor trust" means a resident trust that meets the following conditions: (i) the trust does not qualify as a grantor trust under section six hundred seventy-one through six hundred seventy-nine of the internal revenue code, and (2) the grantor's transfer of assets to the trust is treated as an incomplete gift under section twenty-five hundred eleven of the internal revenue code, and the regulations thereunder.

<p>Source Income: NY is not UDITPA state, but MSP is actually enshrined in Constitution, see article and memos below for variations</p>	<p>N.Y. TAX. LAW § 631 : NY Code - Section 631: New York source income of a nonresident individual: [note change from UDITPA/intangible rule]</p> <p>(a) General. The New York source income of a nonresident individual shall be the sum of the following: (1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources, including: (A) his distributive share of partnership income, gain, loss and deduction, determined under section six hundred thirty-two, and (B) his pro rata share of New York S corporation income, loss and deduction, increased by reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, determined under section six hundred thirty-two, and (C) his share of estate or trust income, gain, loss and deduction, determined under section six hundred thirty-four and (2) The portion of the modifications described in subsections (b) and (c) of section six hundred twelve which relate to income derived from New York sources (including any modifications attributable to him as a partner or shareholder of a New York S corporation). (b) Income and deductions from New York sources. (1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to: (A) the ownership of any interest in real or tangible personal property in this state; or (1) For purposes of this subparagraph, the term "real property located in this state" includes an interest in a partnership, limited liability corporation, S corporation, or non-publicly traded C corporation with one hundred or fewer shareholders (hereinafter the "entity") that owns real property that is located in New York and has a fair market value that equals or exceeds fifty percent of all the assets of the entity on the date of sale or exchange of the taxpayer's interest in the entity. Only those assets that the entity owned for at least two years before the date of the sale or exchange of the taxpayer's interest in the entity are to be used in determining the fair market value of all the assets of the entity on the date of sale or exchange. The gain or loss derived from New York sources from the taxpayer's sale or exchange of an interest in an entity that is subject to the provisions of this subparagraph is the total gain or loss for federal income tax purposes from that sale or exchange multiplied by a fraction, the numerator of which is the fair market value of the real property located in New York on the date of sale or exchange and the denominator of which is the fair market value of all the assets of the entity on the date of sale or exchange.</p>
	<p>New York State Department of Taxation and Finance Advisory Opinion TSB-A-15(5)I dated May 29, 2015: where a non-resident (Georgia) sells S corporation stock on installment, the gain is NY source income taxable by NY where the S corp is primarily comprised of NY real estate, although the interest on the installment note would not be.</p>
	<p><i>Matter of Franklin C. Lewis</i>, N.Y. DTA No. 827791 (ALJ Determination June 20, 2019) – non-NY resident sells S corporations, but not as a pure stock sale, but the buyers and sellers agreed to a stock sale with an IRC § 338(h)(10) election deeming it an asset sale for federal income tax purposes. NY clarified (some would say "changed") its law regarding S corporation 338(h)(10) transactions after the transaction in question, and they made the law retroactive. Naturally the taxpayer argued that this violated the Due Process Clauses of the United States and New York constitutions. This argument did not sway the court, however, since the legislature had clearly meant to ratify tax department's prior interpretation and cure what it saw as incorrect prior rulings.</p>
	<p>New York State Department of Taxation and Finance Technical Memo TSB-M-09(5)I (May 5, 2009) Amendment to the Definition of New York Source Income of a Nonresident Individual - outlines changes to Section 631 and provides examples, especially sales of intangible entities (LLC/LP/S Corp and non-publicly traded C corps with 100 or fewer members) owning NY real estate</p>

	<p>New York State Department of Taxation and Finance Technical Memo TSB-A-04(7)I (November 12, 2004) - Investment advisory committee considered similar to co-trustee for state income tax residency purposes: "Under the facts in this case, the Committee has been granted broad powers over the assets of the Trusts. For example, the Committee may direct the Trustee to take or refrain from taking any action which the Committee deems it advisable for the Trustee to take or refrain from taking. All of the powers of the Trustee under the Trust Agreements are subject to the directions of the Committee. Since the Committee is an advisor having the controlling power over the Trustee, following Rubin, <i>supra</i>, the members of the Committee are considered to be co-trustees of the Trusts. Therefore, for purposes of the first condition under section 605(b)(3)(D)(i) of the Tax Law and section 105.23(c) of the Regulations, the individuals comprising the Committee are considered to be trustees of the Trusts."</p>
	<p><i>Goldman Sachs Petershill Fund Offshore Holdings (DE) Corp.</i>, N.Y.C. TAT(H) 16-9(GC) (Dec. 6, 2018) – non-resident corporation with no NYC business sold a minority LLC interest. The LLC did business in NYC. Even though sale of an intangible is typically sourced based on the residency of the owner, the court found that NYC had enough nexus to assess NYC's corporate tax on the capital gain on the sale.</p>
	<p>New York State Dept of Tax and Finance Technical Memo TSB-M-18(1)I (April 6, 2018)</p>
	<p>New York State Dept of Tax and Finance Technical Memo TSB-M-18(2)I (April 6, 2018)</p>
	<p>Instructions for Form IT-205-J New York State Accumulation Distribution for Exempt Resident Trusts</p>
<p>New York City (3.876%) (in addition to New York State, not in lieu)</p>	<p>N.Y. Tax Law § 1305: "City resident estate or trust. A city resident estate or trust means: (1) the estate of a decedent who at his death was domiciled in such city, (2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in such city, or (3) a trust, or a portion of a trust, consisting of the property of:</p> <p>(A) a person domiciled in such city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or</p> <p>(B) a person domiciled in such city at the time such trust or portion of a trust became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.</p> <p>For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated."</p>
	<p>[Note: the new 2014 NY legislation quoted above had similar parallel provisions for NYC added as paragraphs 36 and 37 in Subdivision (b) of section 11-1712 of the administrative code of the city of New York, linked to here]</p>
	<p>NY source income rules are summarized in the New York Income Tax Bulletin TB-IT-615 December 15, 2011</p>

North Carolina (5.25% in 2019) Trust Residency factors: beneficiary, but <i>unconstitutional</i>	<p>N.C. Gen. Stat. § 105-160.2: "***The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. The tax on the amount computed above is at the rates levied in G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part.***"</p>
	<p>From North Carolina Fiduciary Income Tax Return Form D-407 Instructions: "A fiduciary must file North Carolina Form D-407 for the estate or trust if he is required to file a federal income tax return for estates and trusts and (1) the estate or trust derives income from North Carolina sources or (2) the estate or trust derives any income which is for the benefit of a resident of North Carolina."</p>
	<p><i>Kaestner</i> case discussed in material holding that the presence of resident in state beneficiaries alone does not by itself empower a state to tax a trust's income where the beneficiaries have no right to demand the income and are uncertain to receive it. The state violated due process in attempting to tax the trust in such an instance. The first link below is to the district court, the second to the 2018 N.C. Sup. Ct. decision, and last is to the most important U.S. Supreme Court decision issued June 21, 2019 for the taxpayer affirming the North Carolina Supreme Ct:</p>
	<p>The Kimberley Rice Kaestner 1992 Family Trust v. North Carolina Dep't of Revenue, 2015 NCBC 36 - lower court decision</p>
	<p>The Kimberley Rice Kaestner 1992 Family Trust v. North Carolina Dep't of Revenue - N. Carolina Supreme Court decision</p>
	<p>North Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust - U.S. Supreme Court decision June 21, 2019</p>
Source Income: NC is not a UDITPA state, see variation in regulation	<p>17 NCAC 06B .3527 DISPOSITION OF PARTNER'S INTEREST</p> <p>(a) An interest in a partnership is intangible personal property. Gain from the sale of a nonresident partner's interest in a partnership is not included in the numerator of the fraction the nonresident uses to determine the amount of income subject to tax in North Carolina unless the sale of the partnership interest conveys title to tangible partnership property. ***</p> <p>(b) Nonresident partners must include their distributive share of the gains or losses from the sale or other disposition of the partnership's assets in the numerator of the fraction in determining North Carolina taxable income. ***</p>
	<p>North Carolina Department of Revenue website</p>

<p>North Dakota (3.22%, decreased to 2.9% as of 2018) Trust residency factors: administration, beneficiary, law, fiduciary, assets</p>	<p>N.D. Admin. Code § 81-03-02.1-04. Reporting - Resident trusts or estates.</p> <ol style="list-style-type: none"> 1. Every fiduciary for a resident trust or estate must file an income tax return with the tax commissioner. 2. A trust or estate is a resident trust or estate when it has a relationship to the state sufficient to create nexus. This includes, but is not limited to, the following contacts: <ol style="list-style-type: none"> a. A beneficiary of the trust or estate is a domiciliary or resident of this state. b. The trustee or executor is a domiciliary or resident of this state. c. Assets making up any part of the trust or estate have situs in this state. d. Any or all of the administration or income production of the trust or estate takes place within this state. e. The laws of this state are specifically made applicable to the trust or estate or to the opposite parties with respect to their fiduciary relationship. f. The trust is a revocable trust, and the grantor is a domiciliary or resident of this state. 3. A trust, or a portion of a trust, is revocable if subject to power by the grantor, at any time, to revest title in the grantor. 4. A nonresident trust or estate is a trust or estate other than a resident trust or estate.
<p>Source Income: ND is a UDITPA state</p>	<p>N.D. Cent. Code §57-38.1-06. Property - Capital gains and losses.</p> <ol style="list-style-type: none"> 1. Capital gains and losses from sales of real property located in this state are allocable to this state. 2. Capital gains and losses from sales of tangible personal property are allocable to this state if: a. The property had a situs in this state at the time of the sale; or b. The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs. 3. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state. <p>N.D. Cent. Code §57-38.1-17.1. Gain or loss on the sale of a partnership.</p> <p>Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. This section applies to the extent, that prior to the sale of the partnership interest, the partnership's income or loss constituted nonbusiness income.</p>
	<p>North Dakota 2017 Fiduciary Income Tax Return Instructions</p>

<p>Ohio (4.797%). Also th+A200re is a 75% deduction for Ohio business income, up to a max of \$187,500 MFJ in 2015 and 100% deduction up to \$250,000 in 2016 - §5747.01(HH). For 2016 forward, Ohio business income taxed at flat 3% rate above the \$250,000. Trust residency factors: testator, settlor, w/ beneficiary</p>	<p>Ohio Rev. Code § 5747.01(I)(3): "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:***</p> <p>(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part. For the purposes of division (I)(3) of this section:</p> <p class="list-item-l1">(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:</p> <p class="list-item-l2">(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;</p> <p class="list-item-l2">(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;</p> <p class="list-item-l2">(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year. If a trust document or instrument became irrevocable upon the death of a person who at the time of death was domiciled in this state for purposes of this chapter, that person is a person described in division (I)(3)(a)(iii) of this section. (b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code.</p> <p class="list-item-l1">(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code. □</p>
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<p>Source Income: OH is not a UDITPA state and has a complicated provision and case law around sales of entities</p>	<p>Ohio R.C. §5747.212 Apportioning gain recognized by nonresident equity investor selling an investment in a closely-held business.</p> <p>(A) This section applies solely for the purpose of computing the credit allowed under division (A) of section 5747.05 of the Revised Code, computing income taxable in this state under division (D) of section 5747.08 of the Revised Code, and computing the credit allowed under section 5747.057 of the Revised Code.</p> <p>(B) A taxpayer, directly or indirectly, owning at any time during the three-year period ending on the last day of the taxpayer's taxable year at least twenty per cent of the equity voting rights of a section 5747.212 entity shall apportion any income, including gain or loss, realized from each sale, exchange, or other disposition of a debt or equity interest in that entity as prescribed in this section. For such purposes, in lieu of using the method prescribed by sections 5747.20 and 5747.21 of the Revised Code, the investor shall apportion the income using the average of the section 5747.212 entity's apportionment fractions otherwise applicable under section 5733.05, 5733.056, or 5747.21 of the Revised Code for the current and two preceding taxable years. If the section 5747.212 entity was not in business for one or more of those years, each year that the entity was not in business shall be excluded in determining the average.</p> <p>(C) For the purposes of this section:</p> <p>(1) A "section 5747.212 entity" is any qualifying person if, on at least one day of the three-year period ending on the last day of the taxpayer's taxable year, any of the following apply:</p> <p>(a) The qualifying person is a pass-through entity;</p> <p>(b) Five or fewer persons directly or indirectly own all the equity interests, with voting rights, of the qualifying person;</p> <p>(c) One person directly or indirectly owns at least fifty per cent of the qualifying person's equity interests with voting rights.</p> <p>(2) A "qualifying person" is any person other than an individual, estate, or trust.</p> <p>(3) "Estate" and "trust" do not include any person classified for federal income tax purposes as an association taxable as a corporation. □</p>
	<p>Contact author for 2014 Probate Law Journal of Ohio article entitled "The Art of Avoiding Ohio Income Tax Using Trusts" and follow up piece</p>
	<p>Also, contact author for article on the <i>Corrigan</i> case addressing Ohio source income, which severely limits application of Ohio R.C. § 5747.212 above to non-residents: http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-2805.pdf</p>
	<p>Also, recent case post-Corrigan, <i>T. Ryan Legg Irrevocable Trust v. Testa</i>, may still apply Ohio R.C. 5747.212 to non-resident trusts if there is sufficient nexus: https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8418.pdf. Contact author for 2018 Probate Law Journal of Ohio article by Layman and Morrow entitled "Selling An Ohio Business: Do You Have A Legg To Stand On to Avoid Ohio Income Tax?"</p>
	<p>Ohio Department of Taxation</p>
<p>Oklahoma (5.25%, reduced to 5.0% as of 2018) Trust residency factors: testator, settlor</p>	<p>68 OK Stat § 68-2353 "6. "Resident trust" means:</p> <p>a. a trust, or a portion of a trust, consisting of property transferred by will of a decedent domiciled in this state at death, or a trust, or a portion of a trust, consisting of the property of a person domiciled in this state if such trust is not irrevocable, and</p> <p>b. a trust, or portion of a trust, consisting of property of a person domiciled in this state at the time such property was transferred to the trust if such trust or portion was then irrevocable or a person domiciled in this state at the time such trust or portion became irrevocable. A trust, or portion of a trust, is irrevocable if it is not subject to a power exercisable solely by the transferor of such property, at any time, to revest title in the transferor. "Nonresident trust" means a trust other than a resident trust."</p>
	<p>68 OK Stat § 68-2353</p>

68 OK Stat § 68-2362(F). "For purposes of determining the adjusted gross income from Oklahoma, the following shall be includable:

1. The ownership of any interest in real or tangible personal property in this state;
2. A business, trade, profession or occupation carried on in this state or compensation for services performed in this state;
3. A business, trade, profession or occupation carried on or compensation for services performed partly within and partly without this state to the extent allocable and apportionable to Oklahoma as determined under Section 2358 of this title;
4. The distributive share of the Oklahoma part of partnership income, gains, losses or deductions;
5. The distributive share of the Oklahoma part of estate or trust income, gains, losses or deductions;
- 6. Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession or occupation carried on in Oklahoma. A part-year resident individual, nonresident individual, nonresident trust or nonresident estate, other than a dealer holding property primarily for sale to customers in the ordinary course of trade or business, shall not be deemed to carry on a business, trade, profession or occupation in Oklahoma solely by reason of the purchase and sale of property for its own account;**
7. The distributive share of the Oklahoma taxable income or loss of a corporation defined in subchapter S of the Internal Revenue Code, 26 U.S.C., Section 1361 et seq.;
8. Income received from all sources of wagering, games of chance or any other winnings from sources within this state. Proceeds which are not money shall be taken into account at their fair market value; and
9. The distributive share of the Oklahoma part of limited liability company income, gains, losses or deductions."

Source income:
OK is not a
UDITPA state, but
has similar rule for
sale of intangible,
MSP

68 OK Stat § 68-2358(A)(4)(b): "**Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer**, except that:
(1)where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; interest income from investments held to generate working capital for a unitary business enterprise shall be included in apportionable income; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned,***"

[Oklahoma Nonresident Fiduciary Income Tax Return Forms and Instructions](#)

Note: there is also a special capital gains deduction even for OK source income for capital gains and 3 or 5 yr holding periods and other criteria are met: 68 OK Stat. §65-2358(D). See also OAC 710:50-15-48. Oklahoma source capital gain deduction

[Oklahoma Tax Commission website](#)

**Oregon
(9.9%) Trust
residency factors:**
fiduciary,
administration

Or. Rev. Stat. § 316.282(1)(d)**"Resident trust" means a trust, other than a qualified funeral trust, of which the fiduciary is a resident of Oregon or the administration of which is carried on in Oregon. In the case of a fiduciary that is a corporate fiduciary engaged in interstate trust administration, the residence and place of administration of a trust both refer to the place where the majority of fiduciary decisions are made in administering the trust.*****3) The Department of Revenue shall adopt rules defining "trust administration" for purposes of subsection (1)(d) of this section that include within the definition activities related to fiduciary decision making and that exclude from the definition activities related to incidental execution of fiduciary decisions.

Or. Admin. R. 150-316.282(3)-(4)

(3) A trust is a resident if the fiduciary is a resident of Oregon or if it is administered in Oregon.

(4) A trust is a nonresident only if there is no Oregon resident trustee and the administration is not carried on in Oregon. See ORS 316.307 and the rules thereunder regarding treatment of nonresident trusts.

Source Income: OR is a UDITPA state, but has a very comprehensive regulatory scheme that deviates somewhat, see administrative rule and article for more detail	<p>Or. Admin. R. 150-316.0171 Gross Income of Nonresidents; Other Income and Sale of Property</p> <p>(1) Income from intangible personal property.</p> <p>(a) Business situs. Intangible personal property, including money or credits, of a nonresident has a situs for taxation in Oregon when used in the conduct of the taxpayer's business, trade, or profession in Oregon. Income from the use of such property, including dividends, interest, royalties, and other income from money or credits, constitutes a part of the income from a business, trade, or profession carried on in Oregon when such property is acquired or used in the course of such business, trade, or profession as a capital or current asset and is held in that capacity at the time the income arises.</p> <p>(b) If a nonresident pledges stocks, bonds, or other intangible personal property in Oregon as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Thus, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here. If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property, including gains from the sales of the property, regardless of where the sale is consummated, is income from sources within this state and is taxable to the nonresident.</p>
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Or. Admin. R. 150-316.0171 Gross Income of Nonresidents; Other Income and Sale of Property [continued from above field]

(2) Sales of property.

(a) Tangible property. The gain from any sale, exchange, or other disposition by a nonresident of real or tangible personal property located in Oregon is taxable, even though it is not connected with a business carried on in this state. The loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange, or other disposition of real property or tangible personal property located in Oregon is determined in the same manner and recognized to the same extent as the gain or loss from a similar transaction by a resident.

(b) Intangible property. The gain from the sale, exchange, or other disposition of intangible personal property, including stocks, bonds, and other securities is not taxable unless the intangible personal property has acquired a business situs in Oregon. See section (1) of this rule. Likewise, losses from the sale, exchange, or other disposition of such property are not deductible, unless they are losses incurred in a business carried on within Oregon by the nonresident taxpayer.

(c) S corporation stock. In general, a nonresident's gain or loss from the sale, exchange, or disposition of S corporation stock is not attributable to a business carried on in this state and is not Oregon source income. The gain or loss from the S corporation stock may not be used in the determination of Oregon taxable income unless the stock has acquired a business situs in this state. See section (1) of this rule.

(d) General Partnership Interests. A nonresident's gain or loss from the sale, exchange, or disposition of a general partnership interest in an Oregon partnership is attributable to a business carried on in Oregon and is Oregon source income. The gain or loss is allocated as provided in ORS 314.635.

(e) Limited Partnership Interests. In general, a nonresident's gain or loss from the sale, exchange, or disposition of a limited partnership interest is not attributable to a business carried on in Oregon and is not Oregon source income. The gain or loss from the sale of the interest will not be used in the determination of Oregon taxable income unless the limited partnership interest has acquired a business situs in this state (see section (1) of this rule.).

(f) Limited Liability Company Interests. The taxation of a nonresident's gain or loss from the sale, exchange, or disposition of an interest in a limited liability company (LLC) operating in Oregon is Oregon source income and is taxed in the same manner as:

(A) The sale of a general partnership interest under subsection (2)(d) of this rule if the selling member is a member-manager of the LLC; or

(B) The sale of a limited partnership interest under subsection (2)(e) of this rule if the selling member is not a member-manager of the LLC.

(C) For purposes of this rule, a person is a "member-manager" of an LLC if that member has the right to participate in the management and conduct of the LLC's business. For an LLC that is designated as a member-managed LLC in its articles of organization, all members of the LLC will be member-managers. For an LLC that is designated as a manager-managed LLC in its articles of organization, only those persons who are both members of the LLC and are designated as a manager in the LLC's operating agreement (or elected as managers by the LLC members pursuant to the operating agreement) will be member-managers.

(g) Limited Liability Partnership Interests. A nonresident's gain or loss from the sale, exchange, or disposition of an interest in a limited liability partnership is taxed in the same manner as if it were a general partnership interest under subsection (2)(d) of this rule.

Oregon Department of Revenue website

<p>Pennsylvania (3.07%)</p> <p>Trust residency factors: testator, settlor but see concession in PA-41 instructions and <i>McNeil</i> case</p>	<p>72 P.S. §§ 7301(s): “Resident trust” means:</p> <ol style="list-style-type: none"> (1) A trust created by the will of a decedent who at the time of his death was a resident individual; and (2) Any trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of such creation or transfer was a resident. <p>The term “resident trust” under this subclause (2) shall not include charitable trusts or pension or profit sharing trusts.</p>
	<p>From PA Fiduciary Income Tax Return Form PA-41 Instructions:</p> <p>A grantor trust is a trust in which some or all of the assets are considered to be owned by the grantor for federal income tax purposes.</p> <p>However, Pennsylvania law varies from federal law regarding grantor trusts and federal rules do not apply for Pennsylvania fiduciary income tax purposes.</p> <p>Pennsylvania law imposes the fiduciary income tax on grantor trusts according to the same Pennsylvania personal income tax rules that apply to irrevocable trusts, unless the grantor trust is a revocable trust. See Revocable Trust.</p> <p>The beneficiaries of the trust are taxed on income required to be distributed currently or actually distributed or credited to them. The grantor trust is taxable on the remainder.**** Nonresident Trust</p> <p>A nonresident trust is any irrevocable trust that is not a Pennsylvania resident trust. An inter vivos trust or a testamentary trust created by a resident can become a nonresident trust if the settlor is no longer a resident or is deceased, and the trust lacks sufficient contact with Pennsylvania to establish nexus.</p> <p>Any one of the following conditions provides sufficient contact for a resident trust to remain a resident trust or to requalify as a resident trust:</p> <ul style="list-style-type: none"> • The trust has a resident trustee; • Any trust administration occurs in Pennsylvania; • Trust assets include: <ul style="list-style-type: none"> ◦ Real or tangible personal property located within Pennsylvania, or ◦ Stock, securities or intangible personal property, evidenced by the documents, certificates or other instruments that are physically located, or have a business situs within Pennsylvania; or • The situs of the trust is Pennsylvania as provided in 20 PA. C.S. §7708.
	<p>Link to <i>McNeil v. Commonwealth of Pennsylvania</i> trust tax case discussed in material, not a state supreme court case, but appellate level</p>
	<p>Pennsylvania Department of Revenue Personal Income Tax Guide, Chapter 14 on Estates, Trusts and Decedents</p>
	<p><i>Pa. Trust Income-Tax Planning in the Wake of McNeil</i>, article by John Boxer and Christina Fournaris</p>

Source Income: PA is a UDITPA state	<p>72 P.S. §§ 7301 (k) "INCOME FROM SOURCES WITHIN THIS COMMONWEALTH" for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article to the extent that it is earned, received or acquired from sources within this Commonwealth:</p> <ul style="list-style-type: none"> (1) By reason of ownership or disposition of any interest in real or tangible personal property in this Commonwealth; or (2) In connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth; or (3) As a distributive share of the income of an unincorporated business, Pennsylvania S corporation, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the department under this article; or (4) From intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth; or (5) As gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than prizes of the Pennsylvania State Lottery. <p>Provided, however, That "income from sources within this Commonwealth" for a nonresident individual, estate or trust shall not include any items of income enumerated above received or acquired from an investment company registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940</p>
	<p>Pennsylvania Department of Revenue PERSONAL INCOME TAX BULLETIN 2005-02 Issued: December 15, 2005 Section 2. Income from sources within this Commonwealth.</p> <p>1. The gain derived from a disposition of a proprietary interest in a corporation, investment company or investment partnership, a partner's interest in a partnership, a member's interest in a limited liability company, or a shareholder's share in a Pennsylvania S corporation or business trust does not constitute income from sources within this Commonwealth for a nonresident.</p>
Rhode Island (5.99%) Trust residency factors: testator, settlor, w/ beneficiary	<p>Pennsylvania Department of Revenue website</p> <p>R.I. Gen. Laws §§ 44-30-5(c): "c. Resident estate or trust. A resident estate or trust means:</p> <ul style="list-style-type: none"> (1) The estate of a decedent who at his or her death was a resident individual in this state. (2) A revocable trust which becomes irrevocable upon the occurrence of any event (including death) which terminates a person's power to revoke, but only after the event, and only if the person having the power to revoke was a Rhode Island resident individual at the time of the event. (3) A trust created by will of a decedent who at his or her death was a resident individual in this state. (4) An irrevocable trust created by or consisting of property contributed by a person who is a resident individual in this state at the time the trust was created or the property contributed (A) while the person is alive and a resident individual in this state, and (B) after the person's death if the person died a resident individual of this state. (5) In subdivisions (2), (3), and (4) of this subsection the trust shall be a resident trust only to the extent that the beneficiaries are Rhode Island resident individuals, subject to such regulations as may be promulgated by the tax administrator."

	<p>Personal Income Tax Regulation PIT 90-13A. This regulation is intended to provide guidance as referenced in Title 44, Chapter 30, Section 5(c):</p> <p>A. This regulation is intended to provide guidance as referenced in Title 44, Chapter 30, Section 5(c):</p> <p>(c) Resident Estate or Trust***[basically (c) copies the statute above]</p> <p>B. "Income" has the meaning set out in section 643(b) of the Internal Revenue Code.</p> <p>C. Discretionary trust means a trust where the fiduciary has a discretionary power to distribute income or to accumulate income.</p> <p>II. RESIDENCY STATUS OF BENEFICIARIES</p> <p>A. The status of a beneficiary as a "resident individual" or as a "nonresident individual" is his or her status for personal income tax purposes but determined at the close of the trust's taxable year rather than at the close of the beneficiary's taxable year.</p> <p>B. For those children born after the execution of the trust, children of a resident individual are deemed to be resident individuals and; likewise, children of a nonresident individual are deemed to be nonresident individuals.</p> <p>III. RESIDENCY STATUS OF THE TRUST</p> <p>A. If income is accumulated in a discretionary trust in any year and the trustee has a discretionary power to distribute the income or the accumulated income among a group of people, any one of whom is a resident individual, the trust is deemed to be a resident trust with regard to the accumulated income pertaining to the resident beneficiary or beneficiaries.</p> <p>B. If income is accumulated in a trust in any year, the trust is deemed to be a resident trust for the purposes of the accumulated income to the extent that the income is accumulated for future distribution only to a person who is a (or to persons who are) resident(s) at the close of the trust's taxable year; and is deemed to be a nonresident trust to the extent that the income is accumulated for future distribution to a person(s) who is a nonresident at the close of the trust's tax year.</p> <p>C. Capital gains realized and deemed retained for future distribution to the remaindermen are undistributed gains and the trust is deemed to be a resident trust in the same ratio that the interests of all resident individual remaindermen bear to the interests of all remaindermen.***[helpful examples follow but are too long to copy here]</p>
	<p>State of Rhode Island Division of Taxation Department of Revenue website</p>
<p>South Carolina (7.0%, but see 44% reduction for capital gains net 3.92%) Trust residency factors: administration</p>	<p>S.C. Code § 12-6-30(5): "Resident trust" means a trust administered in this State. "Nonresident trust" is a trust other than a resident trust.</p> <p>From Page 1 of South Carolina Fiduciary Income Tax Return Instructions:</p> <p>B. RESIDENT AND NONRESIDENT ESTATES AND TRUSTS</p> <p>A resident estate is the estate of a person who was a South Carolina resident at the time of death. All other estates are nonresident estates.</p> <p>A resident trust is any trust which is administered in South Carolina. A trust being administered outside of South Carolina shall not be considered a resident trust merely because the governing instrument or a law requires that the laws of South Carolina be followed with respect to interpretation of administration of the trust. All other trusts are nonresident trusts.</p>
	<p>S.C. Code § 12-6-1150. Net capital gain; deduction from taxable income for individuals, estates, and trusts.</p> <p>(A) Individuals, estates, and trusts are allowed a deduction from South Carolina taxable income equal to forty-four percent of net capital gain recognized in this State during a taxable year. In the case of estates and trusts, the deduction is applicable only to income taxed to the estate or trust or individual beneficiaries and not income passed through to nonindividual beneficiaries.</p>

Source Income: SC is not a UDITPA state, but has a similar rule	<p>S.C. Code § 12-6-1720. Taxable income of nonresident individual, trust, estate, or beneficiary; modifications, adjustments, and allocations. A nonresident individual, a nonresident trust, a nonresident estate, and a nonresident beneficiary shall report and compute South Carolina taxable income as a resident taxpayer of this State subject to the following modifications:</p> <p>(1) South Carolina taxable income, gains, losses, or deductions include only amounts attributable to:</p> <ul style="list-style-type: none"> (a) the ownership of any interest in real or tangible personal property located in this State; (b) a business, trade, profession, or occupation carried on in this State or compensation for services performed in this State. If a business, trade, profession, or occupation is carried on or compensation is for services performed partly within and partly without this State, the amount allocable or apportionable to this State under Article 17 of this chapter must be included in South Carolina income; (c) income from intangible personal property, including annuities, dividends, interest, and gains that is derived from property employed in a trade, business, profession, or occupation carried on in this State. For purposes of this item, a taxpayer, other than a dealer holding property primarily for sale to customers in the ordinary course of the nonresident's trade or business, is not considered to carry on a business, trade, profession, or occupation in South Carolina solely by reason of the purchase and sale of property for the nonresident's own account; (d) the distributive share of the South Carolina portion of partnership, "S" Corporation, estate, and trust income, gains, losses, and deductions;
	South Carolina Department of Revenue website
South Dakota	No income tax imposed on trusts.
0%	South Dakota Department of Revenue website
Tennessee (3.0% on dividends & interest in 2018, 2% in 2019, 1% in 2020, phased out in 2021)	<p>Tenn. Code Ann. § 67-2-110(a): Trustees, guardians, administrators, executors, and other persons acting in a fiduciary capacity who receive income taxable under this chapter for the benefit of residents of Tennessee shall be required to make returns under this chapter and to pay the tax levied by this chapter.</p>
Trust residency factors: beneficiary	<p>From 2017 Fiduciary Income Tax Return Instructions: "Who Must File. A person, bank, etc. acting as a Tennessee fiduciary (e.g., administrator, executor, guardian, trustee, or other acting in a similar capacity) who received \$1,250 or more in taxable interest and dividend income for the benefit of Tennessee residents. However, if a grantor trust does not obtain an FEIN, the trustee, instead of filing a return, must report the total amount of income received by the trustee to the grantor, who is liable for the tax. Also, the trustee of a charitable remainder trust is not responsible for payment of tax. The trustee must report to each resident beneficiary the amount of taxable income distributed to him, and the beneficiary is liable for the tax.</p> <p>Trustees who receive taxable income on behalf of nonresident beneficiaries are not required to file a return. However, when taxable income is received on behalf of both resident and nonresident beneficiaries, only the taxable income of any resident beneficiary is required to be reported on Schedule A and on Line 1 of the return. Nonresident income may be reported on Schedule B.</p>
Texas (0%)	No income tax imposed on trusts.
	Texas Comptroller website

Utah (5.0%), for 2018-2020, 4.95%	<p>Utah Code § 75-7-103 "Resident estate" or "resident trust" means:</p> <ul style="list-style-type: none"> (i) an estate of a decedent who at death was domiciled in this state; (ii) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or (iii) a trust administered in this state.
Trust residency factors: testator, administration (but see exception in article)	<p>From Utah Fiduciary Income Tax Return Form TC-41 Instructions, page 3: "Resident estate or resident trust means:</p> <ol style="list-style-type: none"> 1. an estate of a deceased person who, at death, was domiciled in Utah; 2. a trust, or a portion of a trust, consisting of property transferred by will of a deceased person who at death was domiciled in Utah; or 3. a trust administered in Utah. A trust is administered in Utah if: <ol style="list-style-type: none"> a. the trust does not specify a place of administration and the fiduciary transacts a major portion of its trust administration in Utah, b. the fiduciary's usual place of business is in Utah, or c. the trust states that Utah is the place of administration, and any administration of the trust is done in this state.
	<p>[Note: Utah has other unique features, so that certain resident trusts administered in Utah with corporate trustees avoid tax, under different statute below]. See article: Ed Morrow, Geoff Germane and David Bowen on the Art of Using Trusts to Avoid Utah Income Tax, LJSI Income Tax Planning Newsletter #111 (April 17, 2017)</p>
	<p>There are a few subtractions from resident trust income that are truly unique to Utah law. Most notably, income of an irrevocable resident trust is subtracted from federal total income to arrive at Utah taxable income if:</p> <p>Utah Code §59-10-202(2)(b): "(i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;</p> <p>(ii) the trust first became a resident trust on or after January 1, 2004;</p> <p>(iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;</p> <p>(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);</p> <p>(v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and</p> <p>(vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;</p>
	<p>Utah Bar Journal Volume 31 No. 2 Mar/Apr 2018, The Art of Using Trusts to Avoid Utah Income Tax</p>

<p>Source Income: UT is a UDITPA state</p>	<p>Utah Code §59-10-117. State taxable income derived from Utah sources.</p> <p>(1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes state taxable income attributable to or resulting from:</p> <ul style="list-style-type: none"> (a) the ownership in this state of any interest in real or tangible personal property, including real property or property rights from which gross income from mining as described by Section 613(c), Internal Revenue Code, is derived; (b) the carrying on of a business, trade, profession, or occupation in this state; (c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d), or (h) to the extent that the addition was previously subtracted from state taxable income; (d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c) for a refund described in Subsection 59-10-114(2)(c) to the extent that the refund subtracted is related to a tax imposed by this state; or (e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent the adjustment is related to an item described in Subsections (1)(a) through (d). <p>(2) For purposes of Subsection (1):</p> <p>(a) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from Utah sources only to the extent that the income is from property employed in a trade, business, profession, or occupation carried on in this state;***</p>
	<p>Utah Code §59-10-118. Division of income for tax purposes. ***"(5)</p> <p>(a) Capital gains and losses from sales of real property located in this state are allocable to this state.</p> <p>(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:</p> <ul style="list-style-type: none"> (i) the property has a situs in this state at the time of the sale; or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs. <p>(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.</p>
	<p>Utah State Tax Commission website</p>
<p>Vermont (8.95%), reduced for 2018-2020 to 8.75%. Trust residency factors: testator, settlor</p>	<p>32 V.S.A. § 5811(11)(B): A trust qualifies for residency in this State if it is:</p> <p>(i) a trust, or a portion of a trust, consisting of property transferred by will or by a decedent who at his or her death was domiciled in this State; or</p> <p>(ii) a trust, or portion of a trust, consisting of property of:</p> <p>(I) a person domiciled in this State at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or</p> <p>(II) a person domiciled in this State at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.</p>

<p>Source Income: VT is not a UDITPA state but based its rules on UDITPA language, see discussion in Ruling 2015-04</p>	<p>32 V.S.A. § 5823: ***"(b) For any taxable year, the Vermont income of a nonresident individual, estate or trust is the sum of the following items of income to the extent they are required to be included in the adjusted gross income of the individual or the gross income of an estate or trust for that taxable year:</p> <p>(1) Rents and royalties derived from the ownership of property located within this State.</p> <p>(2) Gains from the sale or exchange of property located within this State.</p> <p>(3) Wages, salaries, commissions, or other income (excluding military pay for full-time active duty with the U.S. Armed Services and also excluding funds received through the federal Armed Forces Educational Loan Repayment Program under 10 U.S.C. chapters 109 and 1609; and also excluding the first \$2,000.00 of military pay for unit training in the State to National Guard and U.S. Reserve personnel for whom the Adjutant and Inspector General or Reserve Component Commander certifies that the taxpayer completed all unit training of his or her unit during the calendar year, and who has a federal adjusted gross income of less than \$50,000.00) received with respect to services performed within this State.</p> <p>(4) Income (other than income exempted from State taxation under the laws of the United States) derived from every business, trade, occupation, or profession to the extent that the business, trade, occupation, or profession is carried on within this State, including any compensation received:</p> <p>(A) under an agreement not to compete with a business operating in Vermont;</p> <p>(B) for goodwill associated with the sale of a Vermont business; or</p> <p>(C) for services to be performed under a contract associated with the sale of a Vermont business, unless it is shown that the compensation for services does not constitute income from the sale of the business.</p> <p>(5) Income that was previously deferred under a nonqualified deferred compensation plan and that would have previously been included in the taxpayer's Vermont income if it had not been deferred, and income derived from such previously deferred income;</p> <p>(6) Proceeds from any Vermont State Lottery, tri-state lottery, or multijurisdictional lottery ticket paid to a person who purchased the ticket in Vermont, including payments received from a third party for the transfer of the rights to future proceeds related to the ticket, and the Commissioner may require withholding of any taxes due to the State under this subdivision from payments of lottery proceeds.</p>
	<p>Vermont Tax Commissioner Formal Ruling 2015-04 regarding sale of C corp stock by S corporation based in Vermont being considered source income</p>
	<p>Vermont Department of Taxes</p>
<p>Virginia (5.75%) Trust residency factors: testator, settlor, administration, with exceptions noted below</p>	<p>Va. Code § 58.1-302: "Resident estate or trust" means:</p> <p>1. The estate of a decedent who at his death was domiciled in the Commonwealth;</p> <p>2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;</p> <p>3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or</p> <p>4. A trust or estate which is being administered in the Commonwealth.</p> <p>***"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.</p>
<p>Effective July 1, 2019, administration in state will no longer be a factor</p>	<p>Effective July 1, 2019, the above statute has been amended (House Bill 2526) to omit the fourth trigger of trust residency noted above, see the enrolled bill linked to here.</p>
	<p>Virginia state tax commissioner trust residency ruling 13-18 dated Feb 5, 2013 where having a VA resident co-trustee w/corporate co-trustee in Florida does not trigger 4th prong regarding administration to create a Virginia resident trust although presumably a sole VA resident trustee would.</p>

	Virginia state tax commissioner ruling 07-164 dated October 10, 2007: conceded that Virginia residents serving on committee board of trustees is insufficient to tax the trust as a resident trust.
	Virginia state tax commissioner ruling 93-189 dated August 26, 1993 conceded that where there are no longer any parties (neither trustees nor beneficiaries) who are Virginia domiciles, and no trust property in VA, there is insufficient Constitutional nexus to tax the trust in spite of the trust remaining a Virginia resident trust, provided that "However, it is important to note that under Virginia law the Trust is a Virginia resident trust. As such, the examination of the relationship between the Trust and Virginia is continuous and ongoing. Should either a beneficiary, trustee, or the Trust property become domiciled or located in Virginia, sufficient nexus may then exist to permit taxation of the Trust by the Commonwealth. "
	<p>Va. Code § 58.1-325. Virginia taxable income of nonresident individuals, partners, beneficiaries and certain shareholders</p> <p>A. The Virginia taxable income of a nonresident individual, partner or beneficiary shall be an amount bearing the same proportion to his Virginia taxable income, computed as though he were a resident, as the net amount of his income, gain, loss and deductions from Virginia sources bears to the net amount of his income, gain, loss and deductions from all sources.</p> <p>B. For a nonresident individual who is a shareholder in an electing small business corporation (S corporation), there shall be included in his Virginia taxable income his share of the taxable income of such corporation, and his share of any net operating loss of such corporation shall be deductible from his Virginia taxable income.</p>
Source Income: VA is not a UDITPA state, but has a similar rule	<p>Va. Code § 58.1-302 Definitions</p> <p>For the purpose of this chapter and unless otherwise required by the context: "Income and deductions from Virginia sources" includes:</p> <ol style="list-style-type: none"> 1. Items of income, gain, loss and deduction attributable to: <ul style="list-style-type: none"> a. The ownership of any interest in real or tangible personal property in Virginia; b. A business, trade, profession or occupation carried on in Virginia; or c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or paid at a location in Virginia. 2. Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

23 VAC 10-110-180. Taxable income of nonresidents

A. Generally. The Virginia taxable income of a nonresident individual, partner, shareholder or beneficiary is Virginia taxable income computed as a resident multiplied by the ratio of net income, gain, loss and deductions from Virginia sources to net income, gain, loss and deductions from all sources.

B. Net income, gain, loss and deductions. As used in this regulation, "net income, gain, loss and deductions" includes income, gain, loss and deductions attributable to (i) the ownership of any interest in real or tangible personal property; (ii) the conduct of a business, trade, profession or occupation; (iii) wages, salary, and tips; and (iv) income from intangible personal property employed by an individual in a business, trade, profession or occupation. Net income, gain, loss and deductions includes interest income, dividends (less the exclusion allowed by IRC § 116), business income and loss, capital gains or losses (subject to the 60 long-term capital gains provisions of IRC § 1202), supplemental gains and losses, pensions and annuities (to the extent subject to federal taxation), rents, royalties, income from partnerships, estates, trusts, and S corporations, farm income and loss, unemployment compensation (to the extent) subject to federal taxation), interest on obligations of states other than Virginia, lump sum distributions, and other income such as gambling winnings, prizes and lottery winnings. "Net income, gain, loss and deductions from Virginia sources" means that attributable to property within Virginia, or to the conduct of a trade, business, occupation or profession within Virginia. Net income, gain, loss and deductions from Virginia sources includes salary, tips or wages earned in Virginia, **gain on the sale of property located in Virginia, income or loss from a partnership, estate, trust, or S corporation doing business in Virginia, and income from intangible personal property employed by an individual in a business, trade, profession, or occupation carried on in Virginia.**

Virginia State Tax Commissioner Ruling 11-48 dated March 31, 2011- non resident selling VA S corp not taxed on stock sale, but will be taxed on stock deal treated as an asset sale for income tax purposes under IRC 338(h)(10) as source income.

Virginia State Tax Commissioner Ruling 20-23 dated December 13, 2019 - nonresident not taxed on S corp stock sale: "To the extent payments result from the sale of an intangible asset not employed in a trade or business carried on in Virginia, such payments would not be subject to Virginia income tax when received by a nonresident of Virginia. See Public Document (P.D.) 11-48 (3/11/2011). In this case, the stock itself would not be considered to be an intangible asset employed in a trade or business carried on in Virginia, so gain from the sale of the stock would not be taxable income to a nonresident. The result, however, may be different if an election is made under IRC § 338(h)(10) to treat the stock sale as an asset sale for federal income tax purposes."

Virginia State Tax Commissioner Ruling 08-143 dated July 30, 2008- where S corp and owner domiciled out of VA merely owned an LP interest with undeveloped VA real estate, it was ruled not to be source income.

Washington (0%) No income tax imposed. It does have a business and occupation tax on gross income however, see <https://dor.wa.gov/find-taxes-rates/business-occupation-tax>.

Department of Revenue Washington State website

West Virginia (6.5%)
Trust residency factors: testator, settlor
W. Va. Code § 11-21-7(c): "**Resident estate or trust.**--A resident estate or trust means:
(1) The estate of a decedent who at his death was domiciled in this State,
(2) A trust created by will of a decedent who at his death was domiciled in this State, or
(3) A trust created by, or consisting of property of, a person domiciled in this State."

Source Income: WV is not a UDITPA state, but has a similar rule	WV Code §11-21-32. West Virginia source income of nonresident individual.*** (b) Income and deductions from West Virginia sources. *** (2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from West Virginia sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state. *** (d) Purchase and sale for own account. -- A nonresident, other than a dealer holding property for sale to customers in the ordinary course of his or her trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property for his or her own account.
Wisconsin (7.65%) Trust residency factors: testator, administration, post Oct 29, 1999: testator, settlor - see split rules:	WI Stat § 71.14: "(2) A trust created at death by will, contract, declaration of trust or implication of law by a decedent who at the time of death was a resident of this state shall be considered resident at the domicile of the decedent at the time of the decedent's death until transferred by the court having jurisdiction under s. 72.27 to another court's jurisdiction. After jurisdiction is transferred, the trust shall be considered resident at the place to which jurisdiction is transferred. The hearing to transfer jurisdiction shall be held only after giving written notice to the department of revenue under s. 879.05. (3) Except as provided in sub. (2) and s. 71.04(1)(b)2., trusts created by contract, declaration of trust or implication of law that are made irrevocable and were administered in this state before October 29, 1999, shall be considered resident at the place where the trust is being administered. The following trusts shall be considered to be administered in the state of domicile of the corporate trustee of the trust at any time that the grantor of the trust is not a resident of this state: (a) Trusts that have any assets invested in a common trust fund, as defined in section 584 of the internal revenue code, maintained by a bank or trust company domiciled in this state that is a member of the same affiliated group, as defined in section 1504 of the internal revenue code, as the corporate trustee. (b) Trusts the assets of which in whole or in part are managed, or about which investment decisions are made, by a corporation domiciled in this state if that corporation and the corporate trustee are members of the same affiliated group, as defined in section 1504 of the internal revenue code. (3m)(a) Subject to par. (b) and except as provided in sub. (2) and s. 71.04(1)(b)2., only the following trusts, or portions of trusts, that become irrevocable on or after October 29, 1999, or that became irrevocable before October 29, 1999, and are first administered in this state on or after October 29, 1999, are resident of this state: 1. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of this state at the time that the property was placed in the trust if, at the time that the assets were placed in the trust, the trust was irrevocable. 2. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of this state at the time that the trust became irrevocable if, at the time that the property was placed in the trust, the trust was revocable.
	ESBTs are taxed at the highest marginal rate similar to federal income tax: WI Stat. 71.125 Imposition of tax. *** (2) Each electing small business trust, as defined in section 1361 (e) (1) of the Internal Revenue Code, is subject to tax at the highest rate under s. 71.06 (1), (1m), (1n), (1p), or (1q), whichever taxable year is applicable, on its income as computed under section 641 of the Internal Revenue Code, as modified by s. 71.05 (6) to (12), (19) and (20).
Source Income: WI is not a UDITPA state, but follows similar rule	WI Stat § 71.04 Situs of income; allocation and apportionment:*** All other income or loss of nonresident individuals and nonresident estates and trusts, including income or loss derived from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall follow the residence of such persons, except as provided in par. (b) and sub. (9), except that all income that is realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in this state shall be allocated to this state.*****

	2017 Instructions for the Wisconsin Fiduciary Return Form 2 and Schedule 2K-1
Wyoming (0%)	No income tax imposed.

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Contact edwin.morrow@usbank.com or edwin.morrow3@gmail.com, constructive criticism welcome, especially from tax professionals licensed in state

Thanks to Virginia attorney Katherine E. Ramsey for informing me of update to Virginia law to be effective 7/1/2019, now duly noted above.