IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

1922 TRUST COMPANY, LTA, as Trustee of KMP TRUST,	)	
Petitioner,	)	
v.	)	No.
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Respondent.	)	

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PETITION

1922 Trust Company, LTA, as Trustee ("Petitioner" or "Trustee") of KMP Trust ("Taxpayer" or "Trust"), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Respondent, the Illinois Department of Revenue ("Department"), and alleges as follows:

PARTIES

1. Taxpayer is a trust with 1922 Trust Company, LTA as the Trustee. The Trustee can be reached at (713) 624-5501.

2. Petitioner, as Trustee of the Trust, is represented by Horwood Marcus & Berk Chartered attorneys Fred O. Marcus and Jennifer A. Zimmerman located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312-606-3210 or fmarcus@hmblw.com and 312-606-3247 or jzimmerman@hmblaw.com, respectively.

3. Taxpayer's FEIN is 20-6780949.

4. Taxpayer's Illinois Account Number is 05229-02016.

5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

NOTICE

6. On March 21, 2014, the Department issued a Notice of Denial ("Notice") to Taxpayer denying the refund of taxes in the amount of $22,343 sought by the Petitioner for its 2009 calendar year. A true and accurate copy of the Notice is attached hereto as Exhibit A.

JURISDICTION

7. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

8. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notice.

BACKGROUND

9. In 1961, an irrevocable trust (the "1961 Trust") was established under a Trust Agreement dated March 31, 1961 (the "1961 Trust Agreement"), as a separate share trust within the meaning of Section 663(c) of the Internal Revenue Code of 1954, as amended, and Section 1.663(c)-3 of the Treasury Regulations promulgated thereunder, by and between an individual resident of the State of Illinois, as grantor, and an unrelated individual resident of the State of Illinois, as trustee, for one beneficiary.

10. At the time of the creation of the 1961 Trust, there was no Illinois state income tax.

11. The successor Trustees of the 1961 Trust, two Illinois resident individuals and one Minnesota resident individual, were appointed as successor trustees of the 1961 Trust on or about December 17, 2001 and January 31, 2004, respectively.

12. The 1961 Trust Agreement authorized the trustee of the 1961 Trust, or any successor trustee or trustees, in his, her or their sole discretion, to distribute the whole, or from

time to time any part, of the corpus of the 1961 Trust outright to the beneficiary of the 1961 Trust or to a different trustee or trustees to hold in further trust for the exclusive benefit of the beneficiary of the 1961 Trust.

13. On July 1, 1968, the trustees of the 1961 Trust, in their exercise of the powers granted to them in the 1961 Trust Agreement, executed that certain Exercise of Limited Power of Appointment (the "A.N.P. Exercise") and transferred out of the 1961 Trust to the trustees of A.N.P. Trust #4, a newly created separate trust, a portion of the assets of the 1961 Trust.

14. Two family members of the grantor were the beneficiaries of A.N.P. Trust #4.

15. On January 1, 1989, the beneficiaries of A.N.P. Trust #4, in their exercise of the powers granted to them in the 1961 Trust Agreement, executed that certain Exercise of Limited Power of Appointment Over A.N.P. Trust #4, pursuant to which A.N.P. Trust #4 was divided into two separate equal shares and distributed to two new separate trusts known as A.N.P. Trust #4A and A.N.P. Trust #4B. A.N.P. Trust #4B is now known as A.N.P. Trust #4-Daniel.

16. These new trusts were to be held and administered in accordance with Appendix A to the 1989 Exercise of Limited Power of Appointment (the "1989 Exercise").

17. The successor trustees of the A.N.P. Trust #4-Daniel, two Illinois resident individuals and one Minnesota resident individual, were appointed as successor trustees of the A.N.P. Trust #4-Daniel on or about December 17, 2001 and January 31, 2004, respectively.

18. The beneficiaries of A.N.P. Trust #4-Daniel are all descendants of one of the beneficiaries of A.N.P. Trust #4.

19. On January 3, 2006, the trustees of A.N.P. Trust #4-Daniel (formerly A.N.P. Trust #4B), in their exercise of the powers granted to them in the A.N.P. Exercise, severed A.N.P. Trust #4-Daniel into two separate trusts and transferred to Lewis Linn as Trustee of KMP Trust,

a newly created separate trust, a portion of the assets of A.N.P. Trust #4-Daniel, to be held, administered and distributed pursuant to identical terms for identical beneficiaries and remaindermen as A.N.P. Trust #4-Daniel.

20. At the time of the creation of the KMP Trust, the grantor under the 1961 Trust was deceased but was, for federal income tax purposes, nonetheless considered to be the grantor of the KMP Trust.

21. On February 28, 2013, the 1922 Trust Company, LTA was appointed to serve as Trustee of the KMP Trust.

22. 1922 Trust Company, LTA currently is and at all times since its appointment as Trustee of the Trust has been a resident and domiciliary of the State of Texas and maintains its office in Houston, Texas from which it conducts the business and affairs of the Trust.

23. From its office in Houston, Texas, Trustee of the Trust determines (1) whether and when to distribute the income and/or principal of the Trust and on what terms; (2) the amount of any such distribution; (3) whether a receipt of the Trust is allocable to income or principal; (4) whether to terminate the Trust; (5) whether to compromise, arbitrate, or abandon claims of the Trust; and (6) whether to sue on behalf of, or to defend suits against, the Trust.

24. Trustee of the Trust, from its office in Houston, Texas, also (1) carries out the duties imposed by the terms of the Declaration of Irrevocable Appointment in Trust ("Declaration") and the applicable law; (2) maintains in its office the books and records of the Trust; (3) prepares all accountings and federal and state tax returns for the Trust; and (4) makes management and investment decisions with respect to the Trust.

25. Prior to the appointment of 1922 Trust Company, LTA, Lewis Linn, who at all times relevant hereto has been a resident and domiciliary of the State of Texas, engaged in all of the activities described in paragraphs 23 through 24 from his office in Houston, Texas.

26. The current income beneficiary of the Trust is, and at all times since the creation of the Trust has been neither a resident nor a domiciliary of the State of Illinois.

27. At no time during the 2009 tax year did the Trust hold assets in the State of Illinois.

28. At no time during the 2009 tax year did the Trust earn or receive any income attributable to the State of Illinois.

29. At no time during the 2009 tax year did the Trust own, lease, otherwise use, or earn or receive income from, real estate in the State of Illinois.

30. At no time during the 2009 tax year did the Trust own, lease, otherwise use, or earn or receive income from, tangible personal property located in the State of Illinois.

31. At no time during the 2009 tax year did the Trust hold, license or otherwise use, or earn or receive income from, intangible property located in the State of Illinois.

32. At no time during the 2009 tax year did the Trust earn or receive income from employees located in or performing services in the State of Illinois.

33. At no time during the 2009 tax year did the Trust earn or receive income from the sale of any item or items of real, tangible or intangible property to an Illinois purchaser.

34. During the 2009 tax year, the Trust had no connection to the State of Illinois and did not maintain its principal (or any) place of business in the State of Illinois because, among other factors:

a. the Trustee is a nonresident and a non-domiciliary of the State of Illinois;

b. the offices of the Trust are maintained and the duties of the Trustee are carried out at the Trustee's offices in Houston, Texas;

c. the Trust's current income beneficiary is a nonresident and non-domiciliary of the State of Illinois; and

d. no assets of the Trust are held, in accounts or otherwise, in the State of Illinois.

THE CONTROVERSY

35. On or about August 14, 2013, the Trustee timely filed an Illinois amended tax return for the Trust's 2009 tax year seeking a refund of $22,343.

36. On March 21, 2014, the Department issued a Notice to the Trust denying the refund of taxes in the amount of $22,343 sought by the Trust for its 2009 tax year.

37. Section 201(a) of the Illinois Income Tax Act ("Act") imposes a net income tax on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. 35 ILCS 5/201(a).

38. Beginning on July 1, 1979 and thereafter, in addition to the income tax, Illinois has also imposed a Personal Property Tax Replacement Income Tax measured by the net income of every corporation, partnership and trust for each taxable year ending after June 30, 1979. 35 ILCS 5/201(c).

39. The term "resident" is defined by Act Section 1501(a)(20)(D) to include any irrevocable trust, the grantor of which was domiciled in the State of Illinois at the time the trust became irrevocable.

40. A trust is considered irrevocable when the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code. 35 ILCS 1501(a)(20)(D).

41. The term "person" is defined by Act Section 1501(a)(18) to mean and include an individual, a trust, estate, partnership, association, firm, company, corporation, limited liability company, or fiduciary. 35 ILCS 1501(a)(18).

42. The term "nonresident" is defined by Act Section 1501(a)(14) as a person who is not a resident. 35 ILCS 5/1501(14).

43. At issue here is whether the KMP Trust is properly subject to the taxing jurisdiction of the State of Illinois.

44. Petitioner contends that the Trust is not properly subject to the taxing jurisdiction of the State of Illinois as a resident for the following reasons:

a. The Trust may not, consistent with the United States and Illinois Constitutions, properly be classified and taxed as a resident of the State of Illinois under Act Section 1501(a)(20)(D) and therefore is not subject to the taxes purportedly imposed on it by Act Sections 201(a) and 201(c).

b. In the 2009 tax year, the Trust did not own property in the State of Illinois and did not earn or receive income in or from the State of Illinois. As a result, the Trust is not subject to the taxes purportedly imposed by Act Sections 201(a) and 201(c).

c. The Department's claimed power to tax the Trust violates the Due Process Clauses of the United States and Illinois Constitutions. U.S. Const. amend. XIV, § 1; Ill. Const. 1970 art. I, § 2.

d. The Department's claimed power to tax the Trust violates the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl. 3.

e. The Department's claimed power to tax the Trust violates the Uniformity Clause of the Illinois Constitution. Ill. Const. 1970 art. IX, § 2.

f. The Department's claimed power to tax the Trust violates the Equal Protection Clauses of the United States and Illinois Constitutions. U.S. Const. amend. XIV, § 1; Ill. Const. 1970 art. I, § 2.

COUNT I

THE DEPARTMENT'S CLAIMED POWER TO TAX THE TRUST VIOLATES THE DUE PROCESS CLAUSES OF THE UNITED STATES AND ILLINOIS CONSTITUTIONS

45. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 44, inclusive, hereinabove.

46. In pertinent part, the United States Constitution provides "[N]or shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

47. In pertinent part, the Illinois Constitution of 1970 provides "No person shall be deprived of life, liberty or property without *due process of law* nor be denied the equal protection of the laws." Ill. Const. 1970 art. I, § 2.

48. For purposes of state taxation, the U.S. Supreme Court has held that the Due Process Clause requires that a state seeking to impose a tax (1) have "some definite link, some minimum connection, between [the] state and the person, property or transaction it seeks to tax," Quill Corp. v. North Dakota, 504 U.S. 298, 306 (1992) (quoting Miller Bros. v. Maryland, 347 U.S. 340, 344-45 (19540), and (2) that the income "attributed to the State for tax purposes must be rationally related to 'values connected with the taxing state.'" Moorman Mfg. Co. v. Bair, 437 U.S. 267, 273 (1978) (citation omitted).

49. The second requirement means that the state may tax only the portion of an enterprise's income that is rationally related to the income-generating activities the enterprise conducts in the state.

50. For the 2009 tax year, there is no connection between the State of Illinois and the Trust sufficient to satisfy the minimum contacts requirement of the Due Process Clause.

51. For the 2009 tax year, the Trustee is a nonresident and a non-domiciliary of the State of Illinois, the offices of the Trust are maintained and the duties of the Trustee are carried out at the Trustee's office in Houston, Texas, the Trust's beneficiary is a nonresident and non-

domiciliary of the State of Illinois, none of the Trust's assets are held in Illinois and none of the Trust's income is attributable to Illinois sources.

52. For the 2009 tax year, the taxation of the Trust's income by the State of Illinois bears no rational relationship to any value generated by the Trust because the Trust conducted all of its income-generating activities outside the State and therefore received no benefits or protections from the State that justify the State's taxation of the Trust.

53. Since its inception, the Trust has fallen within the category of Illinois "resident" as defined by Section 1501(a)(20)(D) of the Act solely because the grantor of the 1955 Trust was domiciled in Illinois at the time the 1955 Trust became irrevocable.

54. Act Section 201(a) imposes a tax on all "residents" as that term is defined in the Act on the statutorily-mandated assumption that they earn or receive all their income in or as a resident of this State. 35 ILCS 5/201(a).

55. Act Section 301(a) requires a "resident" to allocate entirely to Illinois all items of income or deduction taken into account in the computation of base income for the taxable year, regardless of the source of the income. 35 ILCS 5/301(a).

56. During the 2009 tax year, Act Sections 1501(a)(20)(D), 301(a), 201(a) and 201(c) required the Trust to allocate 100% of its income to the State of Illinois and pay income and replacement taxes thereon despite the absence of (i) the constitutionally-required minimum connection between the Trust and the State of Illinois and (ii) the constitutionally-required rational relationship between the income attributed to the State of Illinois and the Trust's intrastate activities and value attributable thereto.

57. Act Section 1501(a)(20)(D) irrebuttably and permanently classifies every inter vivos trust as an Illinois "resident" and purports to require the trust to be taxed in perpetuity as a

resident based solely on the one-time event that the trust became irrevocable at a time when the grantor was domiciled in Illinois, without requiring constitutionally-mandated minimum contacts between the trust and the State of Illinois or a rational relationship between the income attributed to the State of Illinois and the Trust's intrastate activities and value attributable thereto.

58. Because the State of Illinois lacks the constitutionally-required minimum connection with the Trust and its income sufficient to tax the Trust under Act Sections 201(a) and 201(c) and because there is no rational relationship between (i) the Trust's income statutorily attributed to the State of Illinois and (ii) the Trust's intrastate activities (which are in fact non-existent), the imposition of such taxes for the 2009 tax year violates the Due Process Clause of the United States Constitution and the Due Process Clause of the Illinois Constitution of 1970 and the statute is unconstitutional as applied to the Trust.

59. The Illinois Appellate Court has recently reviewed this same issue with respect to a similarly situated trust and found that Due Process Clause barred the Department from taxing the trust's income given the trust's complete lack of connections with Illinois. Linn v. Department of Revenue, 2013 Il. App. (4th) 121055 (December 18, 2013). A true and accurate copy of the Linn case is attached hereto as Exhibit B.

WHEREFORE, Petitioner prays that the Tribunal enter judgment in its favor and against Respondent and declare that:

a. that the classification of the KMP Trust as a "resident" of Illinois under Act Section 1501(a)(20)(D), with the consequence that an income tax is imposed on the Trust without requiring constitutionally-sufficient contacts between the State of Illinois and the KMP Trust or a reasonable relationship between the KMP Trust's income and its income-producing activities and the State of

Illinois in the year in which the tax is imposed, (i) violates the Due Process Clause of the United States Constitution and the Due Process Clause of the Illinois Constitution of 1970 and (ii) renders Section 1501(a)(20)(D) unconstitutional as applied to the KMP Trust;

b. in the alternative, that the State of Illinois lacks the constitutionally-required minimum connection with the KMP Trust and its income sufficient to tax the Trust under Act Sections 201(a) and 201(c) and that there is no rational relationship between (i) the Trust's income statutorily attributed to the State of Illinois and (ii) the Trust's intrastate activities and, therefore, that the imposition of such taxes for the 2009 tax year violates the Due Process Clause of the United States Constitution and the Due Process Clause of the Illinois Constitution of 1970 and the statute is unconstitutional as applied to the KMP Trust;

c. the Department withdraw its Notice and grant the refund requested by Petitioner; and

d. that Petitioner be granted such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

THE DEPARTMENT'S CLAIMED POWER TO TAX THE PETITIONER VIOLATES THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION

60. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 44, inclusive, hereinabove.

61. The Commerce Clause of the U.S. Constitution grants to Congress the authority to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3.

62. Even when Congress does not affirmatively act to restrict or expand the power that the states may exercise over interstate commerce, the Commerce Clause itself has been interpreted to impose "negative" restraints upon state action. Quill Corp. v. North Dakota, 504 U.S. 298, 309 (1992).

63. A state tax affecting interstate commerce may be valid under the Commerce Clause, even absent affirmative authorization by Congress, if: (a) the tax is applied to an activity that has a "substantial nexus" with the state; (b) the tax is fairly apportioned to the activities carried on by the taxpayer in the state; (c) the tax does not discriminate against interstate commerce; and (d) the tax is fairly related to the services provided by the state. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977).

64. To be treated as fairly apportioned, a tax must, among other things, be externally consistent. A tax is externally consistent if a state taxes only "that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed." Goldberg v. Sweet, 488 U.S. 252, 262 (1989).

65. The Trustee engages in interstate commerce for the benefit of the Petitioner through, among other things, the purchase and sale of securities that are traded on national security exchanges and the purchase of legal and investment advice and services.

66. In the Trustee's individual capacity, the Trustee is also engaged in interstate commerce by offering to perform at the Trustee's Houston, Texas, office services of the type performed for the Petitioner to persons nationwide.

67. The classification of the Trust as a "resident" under Act Section 1501(a)(20)(D) results in the imposition of a tax that violates the Commerce Clause because it taxes activity that has no substantial nexus to the State of Illinois, is not fairly apportioned to activities carried on by the Trust in the State of Illinois, discriminates against and burdens interstate commerce, and is not fairly related to any services provided by the State of Illinois to the Trust.

68. In the 2009 tax year, the Trust did not earn or receive any income in or attributable to the State of Illinois.

69. In the 2009 tax year, the Trust did not conduct any activity in or purposefully direct its activities at the State of Illinois that established the substantial nexus with the State of Illinois required to satisfy the requirements of the Commerce Clause.

70. Further, in the 2009 tax year, the Trust did not own, lease or license any real, tangible or intangible property in the State of Illinois and did not enjoy or otherwise take advantage of any services or protections provided by the State of Illinois.

71. The imposition of Illinois income tax on the entire net income of the Trust violates the "substantial nexus" test required under the Commerce Clause because Illinois lacks any nexus with any of the Trust's income-producing activities, which took place entirely outside the State of Illinois during the 2009 tax year.

72. The imposition of Illinois income tax on the entire net income of the Trust based solely on the Illinois domicile of the grantor at the time the 1955 Trust became irrevocable violates the external consistency requirement of the fair apportionment test required under the Commerce Clause because none of the income of the Trust was earned or received in Illinois or was the result of any income-producing activity or any investment carried on, directly or indirectly, by the Trust in the State of Illinois.

73. The classification of an inter vivos trust as a "resident" under Act Section 1501(a)(20)(D), based solely on the Illinois domicile of the grantor at the time a trust becomes irrevocable and not on the contacts of the trust or the trust's income-producing activities in the tax year in which the State of Illinois seeks to impose a tax, impermissibly discriminates against and burdens interstate commerce because, by taxing trusts with no present connection to Illinois at the same rate and on the same basis as trusts that have current presence in Illinois, it creates a tax burden that imposes additional costs on trusts with Illinois grantors that conduct their activities and maintain their investments outside of Illinois.

74. The Act provides a resident taxpayer with a credit for taxes paid to another state on the income that is also subject to Illinois income tax in that year. 35 ILCS 5/601(b)(3). The purpose of the credit is to avoid double or multiple state taxation.

75. Despite addressing the threat of double taxation, the Section 601(b)(3) credit does nothing to remedy the unconstitutional imputation of residence, the lack of fair apportionment and the inherently discriminatory impact of the Illinois income tax on an inter vivos trust that is deemed a "resident" of Illinois based solely on the prior domicile in Illinois of the grantor at the time a trust becomes irrevocable and not on the contacts of the trust or of the trust's income-producing activities in the tax year in which the State of Illinois seeks to impose the tax.

76. The imposition of an Illinois income tax on the Trust violates the fair relation test required under the Commerce Clause because the Trust had no presence in or connection to the State of Illinois during the 2009 tax year and therefore received no benefits or services from the State of Illinois.

77. In summary, the classification of the Trust as a "resident" under Act Section 1501(a)(20)(D) results in the imposition of a tax that violates the Commerce Clause because it

taxes activity that has no substantial nexus to the State of Illinois, is not fairly apportioned to activities carried on by the Trust in the State of Illinois, discriminates against and burdens interstate commerce, and is not fairly related to any services provided by the State of Illinois to the Trust.

78. The classification of the Trust as a "resident" under Section 1501(a)(20)(D) of the Act based on the lack of any taxpayer contacts with the State of Illinois in the tax year, and also based on the lack of any facts pertaining to the contacts of the taxpayer's income or income-producing activities with the State of Illinois in the tax year, is a classification that ignores the effect of the tax on interstate commerce and as such, on its face, discriminates against interstate commerce.

WHEREFORE, Petitioner prays that the Tribunal enter judgment in its favor and against Respondent and declare that:

a. Act Section 1501(a)(20)(D) discriminates against interstate commerce and is invalid as applied under the Commerce Clause because it classifies an inter vivos trust as a resident and subjects the trust to unapportioned taxation of its entire income by Illinois even in the total absence of any connection between the State of Illinois and the trust, the trust's income, and the trust's income-producing activities;

b. the imposition of the tax imposed by Act Sections 201(a) and 201(c) upon the income of the KMP Trust violates the Commerce Clause of the United States Constitution;

c. the Department withdraw its Notice and grant the refund requested by Petitioner; and

d. that Petitioner be granted such further relief as this Tribunal deems appropriate under the circumstances.

COUNT III

THE DEPARTMENT'S CLAIMED POWER TO TAX THE TRUST VIOLATES THE UNIFORMITY CLAUSE OF THE ILLINOIS CONSTITUTION

79. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 44, inclusive, hereinabove.

80. In pertinent part, the Illinois Constitution of 1970 provides as follows: "In any law classifying the subject or object of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970 art. IX, § 2 (i.e. the "Uniformity Clause").

81. The Act defines a "person" to include both natural and legal entities, such as an individual, a trust, estate, partnership, association, firm, company, corporation, limited liability company, or fiduciary. 35 ILCS 5/1501(a)(18).

82. The Act defines "taxpayer" as any "person subject to the tax imposed by this Act." 35 ILCS 5/1501(a)(24).

83. The Act defines "business income" as follows:

> The term "business income" means all income that may be treated as apportionable business income under the Constitution of the United States. Business income is net of the deductions allocable thereto. Such term does not include compensation or the deductions allocable thereto. For each taxable year beginning on or after January 1, 2003, a taxpayer may elect to treat all income other than compensation as business income. This election shall be made in accordance with rules adopted by the Department and, once made, shall be irrevocable.
>
> 35 ILCS 5/1501(a)(1).

84. Section 304 of the Act provides in part that:

> a). In general. The business income of a person other than a resident shall be allocated to this State if such person's business income is derived solely from this State. If a person other than a resident derives business income from this State and one or more states, then, . . .[f]or tax years ending on or after December 31, 1998, and except as otherwise provided by this Section, persons other than residents who derive business income from this State and one or more other states shall compute their apportionment factor by weighting their property, payroll, and sales factors as provided in subsection (h) of this Section.
>
> 35 ILCS 5/304(a).

85. Section 306 of the Act provides as follows:

> § 306. Allocation or Apportionment of Income by Estates and Trusts. The items of income and deduction taken into account by an estate or trust in computing its base income for a taxable year shall be allocated or apportioned to this State to the extent provided by Sections 301 through 304 [35 ILCS 5/301 through 35 ILCS 5/304] and, to the extent properly paid, credited or required to be distributed to the beneficiaries for such taxable year, shall be deemed to have been so paid, credited or distributed pro rata.
>
> 35 ILCS 5/306.

86. Section 301 of the Act provides that:

> § 301. General Rule. (a) Residents. All items of income or deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State.
>
> 35 ILCS 5/301(a).

87. An inter vivos trust that is deemed to be a "resident" under Section 1501(a)(20)(D) based solely on the domicile of the grantor within Illinois at the time the trust becomes irrevocable, notwithstanding that the trust derives business income from more than one state and notwithstanding the trust's contacts with other states and lack of contact with Illinois, is not allowed to apportion its income pursuant to Section 304 in the manner allowed to other trusts that differ only in that their grantor was not domiciled in Illinois at the time the trust became irrevocable.

88. By operation of Section 1501(a)(20)(D) and Section 306 of the Act, an inter vivos trust whose trustee, trust offices, trust property, and all other domiciliary contacts are within Illinois, but whose grantor was not domiciled in Illinois at the time the trust became irrevocable, will be classified as a nonresident under Section 1501(a)(14) and thus be entitled to the benefit of the income apportionment provisions of Section 306 of the Act as a nonresident using Section 304 of the Act.

89. On the other hand, by operation of Section 1501(a)(20)(D) and Section 306 of the Act, an inter vivos trust whose trustee, trust offices, trust property, and all other domiciliary contacts are outside Illinois, but whose grantor was domiciled in Illinois at the time the trust became irrevocable, will be classified as a resident under Section 1501(a)(20)(D) and be denied the apportionment of income and will instead be required by Section 306 of the Act to allocate 100% of its income to Illinois as a "resident" pursuant to Section 301(a) of the Act.

90. There is no real and substantial difference reasonably related to a legitimate state purpose to justify classifying differently an inter vivos trust that derives income from more than one state but whose grantor was a domiciliary of a state other than Illinois at the time the trust became irrevocable and an inter vivos trust whose grantor was a domiciliary of Illinois at the time the trust became irrevocable.

91. Because the definition of "resident" under the Act Section 1501(a)(20) does not include corporations, partnerships, associations, or trusts -- other than testamentary trusts or other trusts that become irrevocable when the grantor is domiciled in Illinois -- all non-natural taxpayers, regardless of whether they are organized under the laws of Illinois or elsewhere, are deemed nonresidents pursuant to Section 1501(a)(14) of the Act and therefore have the benefit of apportioning their income derived from more than one state pursuant to Section 304 of the Act.

92. There is no real and substantial difference reasonably related to a legitimate state purpose to justify classifying differently an inter vivos trust that is treated as a resident under Section 1501(a)(20)(D) based solely on the domicile of its grantor at the time it becomes irrevocable, and that is therefore required to allocate 100% of its income to Illinois under Section 301(a) of the Act, and every other non-natural taxpayer that is considered a nonresident under Section 1501(a)(14) and that is required to apportion its income pursuant to Section 304 of the Act, even though it may be organized under the laws of Illinois.

93. Section 1501(a)(1) provides that "a *taxpayer* may elect to treat all income other than compensation as business income. This election shall be made in accordance with rules adopted by the Department and, once made, shall be irrevocable." 35 ILCS 5/1501(a)(1) (italics added.

94. The Trust is a "taxpayer" within the definition of that term in Section 1501(a)(24).

95. A trust that is classified as a nonresident "taxpayer" under Section 1501(a)(14) of the Act is allowed to elect that all its income be treated as business income subject to apportionment, as provided by Section 1501(a)(1), on Schedule NR to Form IL-1041 Fiduciary Income and Replacement Tax Return.

96. An inter vivos trust that is classified as a resident "taxpayer" under Section 1501(a)(20)(D) of the Act is not allowed by the Form IL-1041 Fiduciary Income and Replacement Tax Return or by any schedule to that form, or by any regulation promulgated by the Department to make the election to have all of its income treated as business income subject to apportionment.

97. If the Court finds the current definition of resident trust unconstitutional, an inter vivos trust such as the Trust will have the same Illinois income tax status as other non-resident legal entities that are not natural persons.

98. As a consequence, if the Court so holds and if in the future the Trust has income attributable to Illinois under the rules for allocation and apportionment of income of a non-resident legal entity, Petitioner will be required to file and will file a State of Illinois income tax return on behalf of the Trust treating its income as allocable or apportionable as required by the Act and will be required to pay and will pay all taxes that may be owed to the State on the same basis as other taxpayers that are not natural persons.

99. Under Section 1501(a)(19), the term "regulations" includes "forms prescribed by the Department." 35 ILCS 1501(a)(19).

100. The Department's regulation, as evidenced by Form IL-1041 and schedules required thereby, is directly contrary to the Act because it restricts the election available to any "taxpayer" under the Act to persons other than those that are classified as a "resident" under Section 1501(a)(20)(D).

101. There is no real and substantial difference reasonably related to a legitimate state purpose to justify classifying differently an inter vivos trust that is a "taxpayer" under Section 1501(a)(24), but that is treated as a resident under Section 1501(a)(20)(D) solely by virtue of the residence of its grantor at the date of irrevocability, and an inter vivos trust that is a "taxpayer" under Section 1501(a)(24), but that is treated as a nonresident under Section 1501(a)(14) that supports excluding a "resident" trust from making the election that Section 1501(a)(1) allows to any "taxpayer" to treat all income as business income.

classified as "residents" by Section 1501(a)(20), and the regulation is therefore an unreasonable interpretation of the Act and is invalid;

e. the Department withdraw its Notice and grant the refund requested by Petitioner; and

f. that Petitioner be granted such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IV

THE DEPARTMENT'S CLAIMED POWER TO TAX THE TRUST VIOLATES THE EQUAL PROTECTION CLAUSES OF THE U.S. CONSTITUTION AND ILLINOIS CONSTITUTION

102. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 44, inclusive, hereinabove.

103. The United States Constitution, in pertinent part provides: "[N]or shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the *equal protection of the laws.*" U.S. Const. amend. XIV, § 1 (italics added).

104. In pertinent part, the Illinois Constitution of 1970 provides that: "No person shall be deprived of life, liberty or property without due process of law nor be denied the *equal protection of the laws*." Ill. Const. 1970 art. I, § 2 (italics added).

105. Under Act Section 1501(a)(20)(D), an inter vivos trust that becomes irrevocable when its grantor is domiciled in Illinois is thereafter in perpetuity denied the ability to determine its Illinois income tax obligation and liability by reference to its own facts concerning its contacts with the State of Illinois during the year in which the tax is imposed, unlike every other person that is classified as a "taxpayer" under the Act.

106. Singling out an inter vivos trust whose grantor was domiciled in Illinois when the trust became irrevocable and forever fixing that trust's status as an Illinois "resident" while allowing every other person within the definition of a "taxpayer" that is organized or incorporated in Illinois to determine annually its Illinois tax status by reference to the facts concerning its contacts with the State of Illinois regarding the year in which the tax is imposed is not rationally related to a legitimate state purpose.

WHEREFORE, Petitioner prays that the Tribunal enter judgment in its favor and against Respondent and declare that:

a. there is no rational relation to a legitimate purpose of the Act to include in the definition of "resident" an inter vivos trust solely on the basis that its grantor is domiciled in the State of Illinois when the trust becomes irrevocable, and therefore Act Section 1501(a)(20)(D) violates the Equal Protection Clauses of the United States and Illinois Constitutions;

b. there is no rational relation to a legitimate purpose of the Act to require an inter vivos trust that becomes irrevocable when its grantor is domiciled in the State of Illinois to determine its tax obligations and liabilities under the Act without reference to its own contacts with the State of Illinois in the year in which the tax is imposed, while requiring all other persons subject to the Act to determine their tax obligations and liabilities by reference to their own contacts with the State that occur in the year in which the tax is imposed, and therefore Section 1501(a)(20)(D) violates the Equal Protection Clauses of the United States and Illinois Constitutions;

c. the Department withdraw its Notice and grant the refund requested by Petitioner; and

d. that Petitioner be granted such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,
Petitioner

By: _____
One of Petitioner's Attorneys

Fred O. Marcus
Jennifer A. Zimmerman
Horwood Marcus & Berk Chtd.
500 W. Madison St., Ste. 3700
Chicago, Illinois 60661
(312) 60-3200

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing **Petition** are true, accurate and correct.

By: _____

Name: 1922 Trust Company, LTA,
Trustee of KMP Trust

Its:
By: Lewis M. Linn, President

Subscribed and Sworn to before me
this 24th day of April, 2014

_____
Notary Public

2087284/1/2706.000

Illinois Department of Revenue

IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney. ***Do not send this form separately.***

Step 1: Complete the following taxpayer information

1 KMP TRUST
Taxpayer's name

2 20-6780949
Taxpayer's identification number(s)

3 3555 TIMMONS LANE, SUITE 800
Taxpayer's street address

HOUSTON TX 77027
City State ZIP

Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

FRED O. MARCUS Name	JENNIFER A. ZIMMERMAN Name	Name
HORWOOD MARCUS & BERK Name of firm	HORWOOD MARCUS & BERK Name of firm	Name of firm
500 W. MADISON, SUITE 3700 Street address	500 W. MADISON, SUITE 3700 Street address	Street address
CHICAGO IL 60661 City State ZIP	CHICAGO IL 60661 City State ZIP	City State ZIP
(312) 606-3210 Daytime phone number	(312) 606-3247 Daytime phone number	( ) Daytime phone number
fmarcus@hmblaw.com E-mail address	jzimmerman@hmblaw.com E-mail address	E-mail address
Income 2009 Specific tax type Year or period	Income 2009 Specific tax type Year or period	Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above **do not** have the power to – *Check only the items below you **do not** wish to grant.*

- _____ endorse or collect checks in payment of refunds.
- _____ receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- _____ execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- _____ execute consents extending the statutory period for assessments or collection of taxes.
- _____ delegate authority or substitute another representative.
- _____ file a protest to a proposed assessment.
- _____ execute offers in compromise or settlement of tax liability.
- _____ represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- _____ obtain a private letter ruling on behalf of the taxpayer.
- _____ perform other acts (explain) _____

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

Name	Name	Name
Street address	Street address	Street address
City State ZIP	City State ZIP	City State ZIP
( ) Daytime phone number	( ) Daytime phone number	( ) Daytime phone number
Date granted	Date granted	Date granted

Continued on Page 2

7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

FRED O. MARCUS		
Name	Name	Name
500 W. MADISON, SUITE 3700		
Street address	Street address	Street address
CHICAGO IL 60661		
City State ZIP	City State ZIP	City State ZIP
(312) 606-3247	( )	( )
Daytime phone number	Daytime phone number	Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Lewis M. Linn	1922 Trust Company LTA, Trustee By: Lewis M. Linn, President	4/16/2014
Taxpayer's signature	Title, if applicable	Date
Spouse's signature	Title, if applicable	Date
If corporation or partnership, signature of officer or partner	Title, if applicable	Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am **not** currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

ATTORNEY	ILLINOIS		4/14/14
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), *etc.*)	Signature	Date
ATTORNEY	ILLINOIS		4/14/14
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), *etc.*)	Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), *etc.*)	Signature	Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

f the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

_____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness Date

Signature of witness Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary Date

Notary seal

This form is authorized by the Illinois Tax Act. Disclosure of this information is REQUIRED. Failure to provide information could result in a penalty. This form has been approved by the Forms Management Center. IL-492-0058

EXHIBIT A

Notice of Claim Status

for IL-1041-X, Amended Fiduciary Income and Replacement Tax Return

RECEIVED
MAR 27 2014
HOUSTON

#BWNKMGV
#CNXX X199 235X 4327#
TRUST KMP
ATTN: LEWIS M LINN TRUSTEE
3555 TIMMONS LN STE 800
HOUSTON TX 77027-6498

March 21, 2014

Letter ID: CNXXX199235X4327

Account ID: 05229-02016
FEIN: 20-6780949
Reporting Period: December 2009

Notice of Denial

We have reviewed your Form IL-1041-X, Amended Fiduciary Income and Replacement Tax Return, which you signed and dated August 14, 2013, for the reporting period shown above. **This review is not the result of an audit.**

We cannot process your amended return at this time. You made a math error in Step 3 of your IL-1041-X. Please review your return and send us a corrected IL-1041-X if necessary.

You must send us this information within 60 days of the date of this letter.

If you agree with our determination and your account is in balance, do nothing. You will receive a refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill. If you are under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligation to file tax returns.

If you do not agree with our determination, you may file a written protest against our denial, and, if you desire, you may request a hearing. You must do so within 60 days of date of this notice. Your request must be in writing, clearly indicating that you want to protest, and explaining in detail why you do not agree.

If you file an acceptable protest on time, we must reconsider our denial as provided in IITA, Sections 910 and 914. If requested, we will grant you or your authorized representative a hearing. If you do not file a written protest within the time period, this denial shall become final.

If you have any questions, please write or call our Springfield office weekdays between 8 a.m. and 4 p.m. Our address and telephone number are below.

Chad Nelson

BUSINESS PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
IL DEPT OF REVENUE, PO BOX 19004
SPRINGFIELD IL 62794-9004

217 557-8766
217 785-8202 fax

Enclosures: Form EAR-14, Protest Filing Form
Form IDR-867, Taxpayer Bill of Rights
Return Envelope

EXHIBIT B

LEWIS LINN, as Trustee of the Autonomy Trust 3, Plaintiff-Appellant, v. THE DEPARTMENT OF REVENUE; BRIAN HAMER, in His Official Capacity as Director of The Department of Revenue; and DAN RUTHERFORD, in His Official Capacity as Treasurer of the State of Illinois, Defendants-Appellees.

NO. 4-12-1055

APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

2013 IL App (4th) 121055; 2 N.E.3d 1203; 2013 Ill. App. LEXIS 887; 377 Ill. Dec. 922

December 18, 2013, Filed

SUBSEQUENT HISTORY: As Corrected February 7, 2014.

PRIOR HISTORY: [***1]
Appeal from Circuit Court of Sangamon County. No. 07TX0001/01. Honorable John Schmidt, Judge Presiding.

DISPOSITION: Reversed and remanded with directions.

SYLLABUS

In an action seeking the return of a 2006 income-tax payment made under protest by plaintiff trustee on behalf of a trust on the ground that the trust had no connection with Illinois and that taxation of the trust was unconstitutional, the appellate court reversed the entry of summary judgment for defendants, including the Illinois Department of Revenue, because taxation of the trust by Illinois would violate due process where the trust was an *inter vivos* trust, it was not a testamentary trust under the jurisdiction of an Illinois probate court, and although the predecessors of the trust were related to Illinois, the choice of law provision of the trust provided for the application of Texas law, the trust had the benefits and protections of Texas law, the trust had nothing in Illinois in 2006, its business was all in Texas, the trustee, the protector, and the noncontingent beneficiary resided outside Illinois, no trust property was in Illinois, and the trust met none of the criteria that would give Illinois personal jurisdiction in litigation involving the trust.

COUNSEL: Fred O. Marcus (argued), David S. Ruskin, Horwood Marcus & Berk Chtrd., of Chicago; Alan Y. Ytterberg, Ytterberg Deery Knull LLP, of Houston, Texas, for appellant.

Lisa Madigan, Attorney General, of Chicago (Michael A. Scodro, Solicitor General, Evan Siegel (argued), Assistant Attorney General, of counsel), for appellees.

JUDGES: JUSTICE TURNER delivered the judgment of the court, with opinion. Justices Knecht and Steigmann concurred in the judgment and opinion.

OPINION BY: TURNER

OPINION

[**1204] [*P1] In May 2007, plaintiff, Lewis Linn, as trustee of the Autonomy Trust 3, filed a verified complaint for declaratory and injunctive relief against defendants, the Department of Revenue (Department); Brian Hamer, as the Department's director; and Dan Rutherford, as the Illinois Treasurer. Plaintiff's complaint sought the return of an income-tax payment it had made under protest because any income taxation on the Autonomy Trust 3 was unconstitutional as the trust had no connections with Illinois. The parties filed cross-motions for summary judgment. After memoranda and oral arguments, the Sangamon County circuit court granted defendants' motion for summary judgment and denied plaintiff's.

[*P2] Plaintiff appeals, arguing the trial court erred in granting summary judgment in defendants' favor

because (1) the Illinois choice-of-law provision in the original trust agreement does not apply to the Autonomy Trust 3, and [***2] (2) the imposition of Illinois income taxation on the Autonomy Trust 3 is unconstitutional as it violates both the due process and commerce clauses. We reverse and remand with directions.

[*P3] I. BACKGROUND

[*P4] In March 1961, A.N. Pritzker entered into a trust agreement establishing [**1205] "P. G. Trusts" with trustee Meyer Goldman, in which 20 separate, irrevocable trusts were created. At the time of the agreement, both A.N. and Goldman were Illinois residents, and the trust assets were deposited in Illinois. Article IX of the March 1961 trust agreement allowed the trustee to distribute the whole or part of the corpus of the trust to a different trustee or trustees to hold in further trust for the exclusive benefit of the beneficiary of each of the 1961 trusts. Article V, section 2(b), also gave the trustee the power, in his discretion, to distribute the whole or part of the trust corpus to its beneficiary after the beneficiary had attained 30 years of age. Further, article XIV of the March 1961 agreement stated the following: "This Agreement shall be construed and administered and the validity of the trusts hereby created shall be determined in accordance with the laws of the State of Illinois." [***3] One of the trusts was for the primary benefit of A.N.'s granddaughter Linda Pritzker and was named the "Linda Trust."

[*P5] Beginning in 1968, other adult beneficiaries of the P.G. Trusts (not Linda) created a new set of trusts called the A.N.P. Trusts with assets from the P.G. Trusts. In 1975, Goldman filed a complaint, addressing, *inter alia*, the adult beneficiaries' right to transfer their interests to the A.N.P. Trusts. Goldman v. Pritzker, No.75-CH-4214 (Cir. Ct. Cook Co.). In June 1977, the circuit court entered a lengthy order granting the relief requested in Goldman's complaint, as amended, and thus approving the creation of the A.N.P. trusts. In the written order, the court retained jurisdiction of the cause and parties for the purpose of paying the fees, costs, and expenses of the proceedings and for any further orders necessary to interpret or implement the provisions of the court's order.

[*P6] A.N. died in 1986 as an Illinois resident, and his estate was probated in Illinois. At some point, Thomas Pritzker of Illinois, Marshall Eisenberg of Illinois, and Arnold Weber succeeded Goldman as trustees of the Linda Trust and were the trustees of the Linda Trust in 2002. (In 2008, the trustees [***4] of the Linda Trust still included two Illinois residents and one nonresident.) On January 2, 2002, the trustees of the Linda Trust exercised their limited power of appointment contained in articles V and IX of the March 1961 trust agreement and irrevocably distributed assets from the Linda Trust to plaintiff, as trustee of the Autonomy Trust 3, for the exclusive benefit of Linda.

[*P7] Along with the power of appointment, the trustees of the Linda Trust and plaintiff entered into a trust agreement that created the Autonomy Trust 3. Provision 9 of the January 2002 trust agreement named Jay Robert Pritzker of Illinois as protector of the trusts created hereunder. We note that Jay was replaced as protector of the Autonomy Trust 3 in December 2002 by Basil Zirinis of Connecticut. Moreover, provision 14 of the January 2002 trust agreement contained the perpetuities savings clause and referenced the lives of those named in the March 1961 trust agreement. Last, provision 15 stated the Autonomy Trust 3 was to be construed and regulated under Texas law, "except that the terms 'income,' 'principal,' and 'power of appointment' and the provisions relating thereto shall be interpreted under the laws [***5] of the state of Illinois."

[*P8] In February 2004, plaintiff filed a complaint in the probate court of Harris County, Texas, seeking reformation of provision 15 of the Autonomy Trust 3 and other trusts that applied Illinois law to some of their terms. Plaintiff sought to strike the language referring to Illinois law, leaving the trusts to be construed and [**1206] regulated by only Texas law. On November 4, 2005, the probate court entered an order, granting the relief plaintiff requested. However, the judgment stated the following: "This Judgment shall become effective as to each of the Trusts as of the date that the Internal Revenue Service issues a favorable ruling holding that the modifications and declarations of this Judgment to the Trust do not result in the loss of such Trust's generation-skipping transfer tax exempt status or otherwise subject such Trust to the generation-skipping transfer tax."

[*P9] In 2006, Linda, her children, and the other contingent beneficiaries of the Autonomy Trust 3 were not Illinois residents. Plaintiff resided in Texas, and the Autonomy Trust 3 was administered in Texas. The Autonomy Trust 3 had no assets in Illinois.

[*P10] In April 2007, the Autonomy Trust 3 filed a 2006 [***6] nonresident Illinois income and replacement tax return, reporting no income from Illinois sources and thus no tax was owed. The Department reclassified the Autonomy Trust 3 as an Illinois resident under section 1501(a)(20)(D) of the Illinois Income Tax Act (Tax Act) (*35 ILCS 5/1501(a)(20)(D)* (West 2006)), taxed 100% of the trust's reported income, and assessed a deficiency liability of $2,729. Pursuant to *section 2a* of the State Officers and Employees Money Disposition Act (*30 ILCS 230/2a* (West 2006)), the Autonomy Trust 3 paid the $2,729 in income tax under protest.

[*P11] In May 2007, plaintiff filed the verified complaint for declaratory and injunctive relief, asserting Illinois's imposition of income tax on the Autonomy Trust 3 violates the commerce, due process, and *equal protection clauses of the United States Constitution* (U.S. Const., art. I, § 8, *amend. XIV, § 1*) and the uniformity clause of the Illinois Constitution of 1970 (*Ill. Const. 1970, art. IX, § 2*). Former Illinois Treasurer Alexi Giannoulias was originally listed as one of the defendants and was later replaced by current Illinois Treasurer Dan Rutherford when Giannoulias's term ended.

[*P12] In September 2011, plaintiff filed [***7] a motion for summary judgment with a supporting memorandum. Along with the memorandum, plaintiff submitted a declaration by him and one by Zirinis. In his declaration, plaintiff states the Texas probate court's judgment became effective on November 4, 2005, the date it was entered. Zirinis stated the duties of the Autonomy Trust 3's protector includes the power to remove any trustee, revoke the designation of a successor trustee, and appoint a successor protector.

[*P13] In May 2012, defendants filed a cross-motion for summary judgement and a response to plaintiff's motion for summary judgment. Defendants first asserted the case could be decided on nonconstitutional grounds and argued (1) the grantor of the Autonomy Trust 3 voluntarily established all of the trusts and subsequent trusts pursuant to Illinois law, (2) the Texas probate court judgment is not binding on this court, and (3) the Department assessed tax on the Autonomy Trust 3 in accordance with Illinois statutes. Defendants then argued the income tax on the Autonomy Trust 3 was constitutional. In support of their motion, defendants attached the following: (1) the March 1961 trust agreement; (2) plaintiff's first response to defendants' [***8] interrogatories (in interrogatory No. 9, plaintiff states the Internal Revenue Service had not issued a ruling regarding the generation-skipping transfer tax); (3) plaintiff's response to defendants' second set of supplemental interrogatories; (4) plaintiff's response to defendants' request to admit; (5) the January 2002 trust agreement; (6) the exercise [**1207] of the power of appointment establishing the Autonomy Trust 3; (7) plaintiff's response to defendants' first supplemental interrogatories; (8) plaintiff's petition in the Texas probate court; and (9) the Texas probate court judgment. In July 2012, plaintiff filed a memorandum in response to defendants' cross-motion for summary judgment and did not attach any supporting documents. In September 2012, defendants filed a reply, attaching the June 1977 judgment of the Cook County circuit court.

[*P14] On October 12, 2012, the trial court heard oral arguments on the cross-motions for summary judgment. Twelve days later, the court entered a written order, granting defendants' motion for summary judgment and denying plaintiff's. In reaching that judgment, the court found the March 1961 trust agreement provided Illinois law was to govern the trust [***9] agreement and any trusts hereby created, which would include the Autonomy Trust 3. The court then concluded the fact Illinois law governed the Autonomy Trust 3 was a sufficient contact to satisfy the due process and commerce clauses.

[*P15] On November 9, 2012, plaintiff filed a timely notice of appeal, which was in sufficient compliance with *Illinois Supreme Court Rule 303* (eff. May 30, 2008), despite its failure to list the Department as a defendant. See *Harry W. Kuhn, Inc. v. County of Du Page, 203 Ill. App. 3d 677, 684-85, 561 N.E.2d 458, 463, 149 Ill. Dec. 180 (1990)* (finding the failure to list all of the defendants in notice of appeal did not render the notice fatally defective where the defendants were all represented by the same attorney and the appellee did not suffer prejudice). Thus, this court has jurisdiction under *Illinois Supreme Court Rule 301* (eff. Feb. 1, 1994).

[*P16] II. ANALYSIS

[*P17] A. Summary Judgment

[*P18] A grant of summary judgment is only appropriate when the pleadings, depositions, admissions, and affidavits demonstrate no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *735 ILCS 5/2-1005(c)* (West 2010); *Williams v. Manchester, 228 Ill. 2d 404, 417, 888 N.E.2d 1, 8-9, 320 Ill. Dec. 784 (2008).* [***10] "'As in this case, where the parties file cross-motions for summary judgment, they invite the court to decide the issues presented as a matter of law.'" *A.B.A.T.E. of Illinois, Inc. v. Giannoulias, 401 Ill. App. 3d 326, 330, 929 N.E.2d 1188, 1192, 341 Ill. Dec. 109 (2010)* (quoting *Liberty Mutual Fire Insurance Co. v. St. Paul Fire & Marine Insurance Co., 363 Ill. App. 3d 335, 339, 842 N.E.2d 170, 173, 299 Ill. Dec. 431 (2005))*. We review *de novo* the trial court's ruling on a motion for summary judgment. See *Williams, 228 Ill. 2d at 417, 888 N.E.2d at 9.*

[*P19] B. Illinois Income Tax

[*P20] The starting point for income taxation in Illinois is section 201(a) of the Tax Act (*35 ILCS 5/201(a)* (West 2006)), which provides, in relevant part: "A tax measured by net income is hereby imposed on every individual, corporation, *trust* and estate *** on the privilege of earning or receiving income in or as a *resident* of this State." (Emphases added.) See also *Rockwood Holding Co. v. Department of Revenue, 312 Ill. App. 3d 1120, 1123-24, 728 N.E.2d 519, 523, 245 Ill. Dec. 437 (2000)*. For residents, "[a]ll items of income or

deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State." [***11] *35 ILCS 5/301(a)* (West 2006). Section 1501(a)(20)(D) of the Tax Act (*35 ILCS 5/1501(a)(20)(D)* (West 2006)) defines "resident," in pertinent part, as [**1208] "[a]n irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable." The parties agree the Autonomy Trust 3 is an irrevocable trust, and A.N. Pritzker, who was an Illinois resident, is considered to be the grantor of the Autonomy Trust 3. Thus, under the Tax Act, the Autonomy Trust 3 is an Illinois resident and subject to Illinois income tax.

[*P21] On appeal, the parties now agree this case cannot be resolved on a nonconstitutional basis. Thus, we turn to plaintiff's allegations of constitutional violations. Plaintiff asserts the imposition of Illinois income tax on the Autonomy Trust 3 is unconstitutional as applied to the trust as it violates both the due process and the commerce clauses. "In undertaking our review, we presume that statutory enactments are constitutional. The burden is on the party challenging the statute to clearly establish any constitutional invalidity. The burden is a formidable one, and this court will uphold a statute's validity whenever it is reasonably possible to do [***12] so." *Allegis Realty Investors v. Novak, 223 Ill. 2d 318, 334, 860 N.E.2d 246, 255, 307 Ill. Dec. 592 (2006).*

[*P22] 1. *Due Process*

[*P23] For a tax to comply with the *due process clause*, (1) a minimum connection must exist between the state and the person, property, or transaction it seeks to tax, and (2) "the income attributed to the State for tax purposes must be rationally related to values connected with the taxing State." (Internal quotation marks omitted.) *Quill Corp. v. North Dakota, 504 U.S. 298, 306, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992)* (quoting *Moorman Manufacturing Co. v. Bair, 437 U.S. 267, 273, 98 S. Ct. 2340, 57 L. Ed. 2d 197 (1978))*. In *Quill Corp., 504 U.S. at 307-08*, the Supreme Court equated that analysis with the determination of whether a state has personal jurisdiction over a given entity. After analyzing the case law regarding personal jurisdiction, the *Quill Corp.* Court held the *due process clause* did not require physical presence in a state for the collection of a use tax. *Quill Corp., 504 U.S. at 308*. There, the company's ongoing solicitation of business in North Dakota was more than enough to subject it to North Dakota's use tax. *Quill Corp., 504 U.S. at 308*.

[*P24] Plaintiff asserts the Autonomy Trust 3 has no connections to Illinois. He notes the Autonomy Trust [***13] 3 is a Texas trust that is governed by the laws of and administered in Texas. Moreover, in 2006, the Autonomy Trust 3's trustee, beneficiary, and protector were all not residents of Illinois. Without any connections to Illinois, the imposition of Illinois income tax on the Autonomy Trust 3 would be unconstitutional under the *due process clause*. Plaintiffs have shown no connections appear to exist with the trust in this case. However, defendants contend connections do exist because (1) the Autonomy Trust 3 owes its existence to Illinois, and (2) Illinois provides the Autonomy Trust 3's trustee and beneficiary with a panoply of legal benefits and opportunities. We note that, on appeal, defendants do not argue that, in 2006, the Autonomy Trust 3 still contained terms to be interpreted under Illinois law and that the Illinois choice of law provision in the March 1961 agreement applies to the Autonomy Trust 3.

[*P25] Both parties cite the Connecticut Supreme Court's decision in *Chase Manhattan Bank v. Gavin, 249 Conn. 172, 733 A.2d 782 (Conn. 1999)*, which was decided after the United States Supreme Court's *Quill Corp.* decision. There, the plaintiffs asserted Connecticut's income taxation on the undistributed [***14] taxable income of four [**1209] testamentary trusts and one *inter vivos* trust was unconstitutional because it violated the due process and commerce clauses. *Gavin, 733 A.2d at 785-86*. Since the case before us involves an *inter vivos* trust, we focus on the facts and analysis related to the *inter vivos* trust. Under Connecticut law, a resident *inter vivos* trust is "'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.'" *Gavin, 733 A.2d at 789* (quoting *Conn. Gen. Stat. § 12-701(a)(4)(D)* (1993)). However, with an *inter vivos* trust, taxable income is then modifiable under a formula that takes into account whether the trust has any resident, noncontingent beneficiaries. *Gavin, 733 A.2d at 790*. Thus, Connecticut taxes only that portion of the *inter vivo* trust's undistributed income that corresponds to the number of noncontingent beneficiaries that live in Connecticut. *Gavin, 733 A.2d at 790*. Accordingly, in *Gavin, 733 A.2d at 790*, the taxability of the *inter vivos* trust's income was based on the facts the trust's settlor was a Connecticut resident when he [***15] established the trust and the trust's beneficiary was a Connecticut resident.

[*P26] Regarding due process, the Connecticut Supreme Court found the critical link between Connecticut and the undistributed income sought to be taxed was the fact the *inter vivos* trust's noncontingent beneficiary was a Connecticut resident during the tax year in question. *Gavin, 733 A.2d at 802*. It explained that, as a Connecticut resident, the noncontigent beneficiary's rights to the eventual receipt and enjoyment of the accumulated income were protected by Connecticut law so long as the beneficiary remained a resident of the state. *Gavin, 733 A.2d at 802*. The *Gavin* court recognized the connection

was "more attenuated" than in the case of a testamentary trust but still found the connection was sufficient to satisfy due process. *Gavin, 733 A.2d at 802.*

[*P27] In support of its conclusion, the *Gavin* court noted the United State Supreme Court had held a state may tax the undistributed income of a trust based on the presence of the trustee in the state because it gave the trustee the protection and benefits of its laws (*Greenough v. Tax Assessors, 331 U.S. 486, 496, 67 S. Ct. 1400, 91 L. Ed. 1621 (1947)*), which are the same benefits and protections provided [***16] a resident, noncontingent beneficiary. *Gavin, 733 A.2d at 802.* The *Gavin* court also noted its conclusion was consistent with the California Supreme Court's decision in *McCulloch v. Franchise Tax Board, 61 Cal. 2d 186, 37 Cal. Rptr. 636, 390 P.2d 412 (Cal. 1964). Gavin, 733 A.2d at 802.* There, the California Supreme Court did not find a due-process violation where California taxed the undistributed income of an out-of-state testamentary trust based solely on the California residence of the trust's beneficiary. *McCulloch, 390 P.2d at 418.* It reasoned California law provided benefit and protection to the resident beneficiary. *McCulloch, 390 P.2d at 418-19.*

[*P28] Defendants begin their argument the Autonomy Trust 3 owes its existence to Illinois by noting the trust's grantor was an Illinois resident. In support of that argument, they cite portions of the *Gavin*opinion that found the grantor's in-state residency was sufficient to establish a minimum contact as to the four testamentary trusts as well as other case law addressing testamentary trusts. However, we are dealing with an *inter vivos* trust. Since an *inter vivos* trust is not created by the probate of the decedent's will in a state court, its connection with the state has [***17] been described as more attenuated than a testamentary trust. *Gavin, 733* [**1210] *A.2d at 802; District of Columbia v. Chase Manhattan Bank, 689 A.2d 539, 547 n.11 (D.C. 1997).* Moreover, an irrevocable *inter vivos* trust does not owe its existence to the laws and courts of the state of the grantor in the same way a testamentary trust does and thus does not have the same permanent tie. *District of Columbia, 689 A.2d at 547 n.11.* With the *inter vivos* trust, the Connecticut Supreme Court found the *critical* link between the state and the *inter vivos* trust was the trust's noncontingent beneficiary was a Connecticut resident during the tax year in question. *Gavin, 733 A.2d at 802.* Autonomy Trust 3 does not have a noncontingent beneficiary in Illinois. Defendants cite no cases finding a grantor's in-state residency is a sufficient connection for due process with an *inter vivos* trust.

[*P29] On the other hand, we note decisions from other states have found the grantor's in-state residence insufficient to establish a minimum connection. In *Blue v. Department of Treasury, 185 Mich. App. 406, 462 N.W.2d 762, 764 (Mich. Ct. App. 1990)*, the Michigan appellate court found insufficient connections between an *inter vivos* trust whose grantor [***18] was a Michigan resident and the State of Michigan's imposition of an income tax. There, the only thing in Michigan was one non-income-producing parcel of real estate, and thus the court concluded Michigan provided no ongoing protection or benefit to the trust. *Blue, 462 N.W.2d at 764.* In *Mercantile-Safe Deposit & Trust Co. v. Murphy, 19 A.D.2d 765, 242 N.Y.S.2d 26, 28 (N.Y. App. Div. 1963)*, a New York appellate court found a due process violation where New York imposed an income tax on income accumulated in a trust created by a New York resident where the trustee resided in Maryland, the trust was administered in Maryland, and trust assets were in the trustee's exclusive possession and control in Maryland. Accordingly, we find the fact the Autonomy Trust 3's grantor was an Illinois resident is not a sufficient connection to satisfy due process.

[*P30] Defendants further argue the Autonomy Trust 3 exists only because of Illinois law. However, Autonomy Trust 3 resulted from a January 2002 exercise of the limited power of appointment by the *trustee* of the P.G. Linda Trust, which was provided for in the March 1961 trust agreement. Assuming *arguendo*, an Illinois court ruling validated a provision of the March [***19] 1961 agreement that allowed for the limited power of appointment that was later invoked to create the Autonomy Trust 3, the Autonomy Trust 3 was created by the provisions of the March 1961 agreement allowing for powers of appointment and not Illinois law. Further, with income taxation, the focus of the due process analysis is on the tax year in question, which would be 2006 in this case. See *Gavin, 733 A.2d at 802* (noting the connection for the *inter vivos* trust was the fact a noncontingent beneficiary was an in-state resident during the tax year in question); see also *In re Swift, 727 S.W.2d 880, 882 (Mo. 1987)* (addressing income taxation on a testamentary trust and stating, "An income tax is justified only when contemporary benefits and protections are provided the subject property or entity during the relevant taxing period"). Thus, what happened historically with the trust in Illinois courts and under Illinois law has no bearing on the 2006 tax year.

[*P31] Additionally, defendants argue the State of Illinois provides the trustee and beneficiary of the Autonomy Trust 3 with a panoply of legal benefits and opportunities. In support of its assertion, it again cites case law addressing testamentary [***20] trusts. See *Gavin, 733 A.2d at 799; District of Columbia, 689 A.2d at 544.* As we have stated, this case involves an *inter vivos* trust, not a testamentary trust. The Autonomy [**1211] Trust 3 was not in existence when A.N. Pritzker died and thus was not part of his probate case. Accordingly, no

Illinois probate court has jurisdiction over the Autonomy Trust 3, unlike in the testamentary trust cases.

[*P32] Defendants also cite several Illinois statutory provisions and claim the Autonomy Trust 3, plaintiff, Linda, or a contingent beneficiary can seek those statutory provisions at any time. However, the parties agree that, after the November 2005 Texas reformation order, the Autonomy Trust 3 choice of law provision provided for only the application of Texas law. Further, as stated earlier, the 1977 Cook County case has no application at all to the Autonomy Trust 3 because it dealt with beneficiary powers of appointment, not trustee powers of appointment in the March 1961 trust agreement. Accordingly, we find the Autonomy Trust 3 receives the benefits and protections of Texas law, not Illinois law.

[*P33] Last, we note the company in *Quill Corp.* mailed catalogs into North Dakota, seeking business there. *Quill Corp., 504 U.S. at 302.* [***21] Here, in 2006, the Autonomy Trust 3 had nothing in and sought noting from Illinois. As plaintiff notes, all of the trust's business was conducted in Texas; the trustee, protector, and the noncontingent beneficiary resided outside Illinois; and none of the trust's property was in Illinois. Moreover, the Autonomy Trust 3 meets none of the following factors that would give Illinois personal jurisdiction over the trust in a litigation: "the provisions of the trust instrument, the residence of the trustees, the residence of its beneficiaries, the location of the trust assets, and the location where the business of the trust is to be conducted." *Sullivan v. Kodsi, 359 Ill. App. 3d 1005, 1011, 836 N.E.2d 125, 131, 296 Ill. Dec. 710 (2005)* (citing *People v. First National Bank of Chicago, 364 Ill. 262, 268, 4 N.E.2d 378, 380 (1936))*. Accordingly, we find insufficient contacts exist between Illinois and the Autonomy Trust 3 to satisfy the *due process clause*, and thus the income tax imposed on the Autonomy Trust 3 for the tax year 2006 was unconstitutional. Thus, summary judgment should have been granted in plaintiff's favor.

[*P34] 2. Commerce Clause

[*P35] Since we have found the income taxation of the Autonomy Trust 3 in 2006 violates the *due process clause*, [***22] we do not address plaintiff's commerce clause argument.

[*P36] III. CONCLUSION

[*P37] For the reasons stated, we reverse the Sangamon County circuit court's judgment and remand the cause for that court to enter an order granting plaintiff's summary-judgment motion and denying defendants'.

[*P38] Reversed and remanded with directions.