36. Trusts
    a. The legislation amends the New York State Tax Law and the New York City Administrative Code in relation to taxing residents who are grantors of exempt resident trusts that qualify as non-grantor incomplete gift trusts on the income from such trusts and taxing residents who are beneficiaries of all other exempt resident trusts or nonresident trusts on the distributions of accumulated income that they receive from such trusts.

Part I of Chapter 59 of the Laws of 2014 requires New York beneficiaries of exempt resident trusts to pay tax on accumulated income distributed to them. The accumulated income will be taxed at the rate in effect in the year in which it is paid out to the beneficiary. Furthermore, the income of a particular type of exempt resident trust, known as an “incomplete gift, non-grantor trusts” (ING trusts), will be taxed to the grantor of the trust.

In general, from an income tax perspective, income that is earned by a resident trust (a trust that becomes irrevocable while its creator is a New York resident) may be included in the income of the grantor, the trust, or the beneficiaries of the trust. Under the Tax Law, however, the accumulated income (i.e., the income of a trust that is not distributed to a beneficiary in the year it is earned) of some types of resident trusts is not subject to any New York tax at the grantor level, the trust level, or the beneficiary level. New York previously exempted from tax a resident trust if it has no trustees or assets located in New York and its income is not derived from New York sources (“exempt resident trusts”).

This legislation closes that loophole in two different ways. With regard to an “ING trust”, the bill requires the New York resident grantor of the ING trust to pay tax on the income of the trust. The fact that the transfer of property to the trust was an incomplete gift means that the New York grantor has retained some degree of control over the property, thereby creating a proper nexus for the State to tax the grantor on the income from that property. With regard to all other exempt resident trusts, distributions of the accumulated income of the trust will under the new law be taxed to the New York resident beneficiaries who receive the distributions. In computing the tax, income accumulated on behalf of beneficiaries that are not yet born or that are under the age of 21 will not be subject to the tax. Credits are to be applied to avoid the income from the trusts being taxed twice at the State level.

This provision takes effect immediately and applies to income accumulated by a trust in a tax year starting on or after January 1, 2014. However, to mitigate transition issues, there is an exclusion for distributions by exempt resident trusts (except ING trusts) of accumulated income made before June 1, 2014, and income earned by ING trusts that are liquidated on or before June 1, 2014.