



**2021 Schedule M2RT, Resident Trust Questionnaire**

Name of Trust \_\_\_\_\_

Federal ID Number \_\_\_\_\_

Minnesota ID Number \_\_\_\_\_

**Check all boxes that apply to the trust, and provide additional requested information.**

**1** One or more of the trustees were residents (full-year or part-year) of Minnesota at any time during the tax year ..... **1** ■   
**1a.** Enter all names and addresses

\_\_\_\_\_  
 \_\_\_\_\_

**2** One or more of the trust's other fiduciaries (besides trustees) and non-fiduciary service providers were residents (full-year or part-year) of Minnesota at any time during the tax year (see instructions) ..... **2** ■   
**2a.** Enter all names and addresses

\_\_\_\_\_  
 \_\_\_\_\_

**3** One or more of the trust's tangible (real or personal) or intangible assets were located, in whole or in part, in Minnesota at any time during the tax year ..... **3** ■   
**3a.** Describe the assets located in Minnesota and enter their fair market value on the applicable date(s)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**4** Administration of the trust took place in Minnesota at any time during the tax year ..... **4** ■   
**4a.** Describe the trust administrative functions that took place in Minnesota

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**5** The laws of Minnesota were specifically made applicable to the trust ..... **5** ■

**5a.** The trust documents contain a choice of law provision designating Minnesota for that purpose. .... **5a** ■

**5b.** The trust was formed under, or the operation is governed by, the laws of Minnesota. .... **5b** ■

**6** One or more of the trust's beneficiaries were residents (full-year or part-year) of Minnesota at any time during the tax year. .... **6** ■   
**6a.** Enter all names and addresses

\_\_\_\_\_  
 \_\_\_\_\_

**6b.** The resident beneficiaries have some degree of possession, control or enjoyment of the trust property or a right to receive that property ..... **6b** ■

**7** One or more of the trust's settlors or grantors were residents (full-year or part-year) of Minnesota at any time during the tax year . **7** ■   
**7a.** Enter all names and addresses

\_\_\_\_\_  
 \_\_\_\_\_

**7b.** The resident settlors or grantors have some degree of possession or control of the trust property. .... **7b** ■

**8** The trust was created by a will of a decedent who at death resided in Minnesota. .... **8** ■

**8a.** The trust was probated in Minnesota's courts ..... **8a** ■

**8b.** Minnesota's courts had a continuing supervisory or other existing relationship with the trust at any time during the tax year . **8b** ■

**9** Lines 1 through 8 do not apply to the trust ..... **9** ■

# 2021 Schedule M2RT Instructions

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## Purpose of Schedule M2RT

Use Schedule M2RT to determine if a statutory resident trust under Minnesota Statute (M.S.) 290.01, subd. 7b also satisfies the requirements of the Due Process Clauses in the U. S. and Minnesota Constitutions. The Minnesota Supreme Court treats these two Due Process Clauses “identically.” *Fielding v. Commissioner of Revenue*, 916 N.W.2d 323, 327, n. 3 (Minn. 2018) (“*Fielding*”). These two clauses will be referred to together as the “Due Process Clause.”

The U.S. Supreme Court addressed the Due Process Clause requirements for a state’s ability to tax a trust in *North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, 588 U.S. \_\_\_, 139 S.Ct. 2213 (2019) (“*Kaestner*”). In *Kaestner*, the U.S. Supreme Court applied a two-step analysis to decide if a state tax abides by the Due Process Clause. The first test requires a minimum connection between a state and the person, property or transaction it seeks to tax. The second test requires the income attributed to the State for tax purposes be rationally related to the taxing State. The Minnesota Supreme Court applied the same two-step analysis in *Fielding*. Schedule M2RT focuses on the first step in the due process analysis, the “minimum connection” test.

## Who Must File Schedule M2RT

Complete and file Schedule M2RT if you meet the statutory definition of a resident trust but believe your trust may not have sufficient minimum connections to Minnesota for due process purposes.

If you meet these requirements and must file Schedule M2RT, you must also check both the **Statutory Resident** and **Due Process Nonresident** checkboxes on page 1 of Form M2.

## Types of Trusts

The statutory definition of resident trust applies to “*inter vivos* trusts” and “testamentary trusts” that are irrevocable. An *inter vivos* trust is a trust that is created during the life of the grantor. A testamentary trust is a trust that is created in the last will and testament of the grantor (i.e., the testator or decedent). An irrevocable trust is one that generally cannot be altered by the grantor.

*Kaestner* and *Fielding* dealt with irrevocable, *inter vivos* trusts. Schedule M2RT asks several questions aimed at helping you determine whether your irrevocable, *inter vivos* trust or irrevocable, testamentary trust has sufficient minimum connections with the State of Minnesota for due process purposes.

## Question Instructions

Check all boxes in questions 1 through 9 that are applicable to your trust for tax year 2021. Also provide the additional information requested in the space provided. If the space provided is not sufficient, include the additional information as an attachment to Schedule M2RT.

### Question 1

Check the box if one or more of the trustees were residents (either full-year or part-year residents) of Minnesota at any time during the trust’s 2021 tax year. Include the names and addresses of all trustees (regardless of their residency status) in the space provided.

A “trustee” includes an original, additional, and successor trustee, and a co-trustee, whether or not appointed or confirmed by a court. [M.S. 501C.0103(i)]

The residency status of an individual trustee is determined under M.S. 290.01, subd. 7 and Minnesota Rule 8002.0200. See the Income Tax Fact Sheet 1, *Residency* and Income Tax Fact Sheet 2, *Part-Year Residents* for more information.

### Question 2

Check the box if one or more of the trust’s other fiduciaries (besides trustees), including, but not limited to, trust protectors, investment trust advisors, and distribution trust advisors, and/or non-fiduciary service providers, including, but not limited to, advisers, administrators, and custodians were residents (either full-year or part-year residents) of Minnesota at any time during the trust’s 2021 tax year. Include the names and addresses of all other fiduciaries and non-fiduciary service providers (regardless of their residency status) in the space provided.

A “fiduciary” is a guardian, trustee, receiver, conservator, personal representative, or any person acting in any fiduciary capacity for any person or corporation. [M.S. 290.01, subd. 8; M.S. 501C.0808, subd. 1(e)]

A “personal representative” is an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. [M.S. 290.01, subd. 8a]

A “trust protector” is a person given one or more of the powers specified in M.S. 501C.0808, subd. 4. [M.S. 501C.0808, subd. 1(i)]

An “investment trust advisor” means any one or more persons given authority by the governing instrument to direct, consent to, or veto the exercise of all or any portion of the investment powers of the trust. [M.S. 501C.0808, subd. 1(g)]

A “distribution trust advisor” means one or more persons given authority by the governing instrument to direct, consent to, veto, or otherwise exercise all or any portion of the distribution powers and discretions of the trust, including but not limited to authority to make discretionary distributions of income or principal. [M.S. 501C.0808, subd. 1(c)]

A “non-fiduciary service provider” is a person who provides services to a trust or trustee.

An “adviser” is someone one who provides advice to a trust or trustee, including, for example, an investment adviser or a financial adviser.

An “administrator” is someone who administers all or a portion of a trust’s affairs.

A “custodian” is someone who is entrusted with guarding and keeping trust property.

The residency status of an individual fiduciary or an individual non-fiduciary service provider is determined under M.S. 290.01, subd. 7 and Minnesota Rule 8002.0200. See the Income Tax Fact Sheet 1, *Residency* and Income Tax Fact Sheet 2, *Part-Year Residents* for more information.

### Question 3

Check the box if one or more of the trust’s tangible (real or personal) or intangible assets were located (in whole or in part) in Minnesota at any time during the trust’s 2021 tax year. This includes assets owned at any point during the taxable year.

Include a description of the assets located in Minnesota and their dollar values in the space provided. The dollar value should be reported at the asset’s fair market value at the earliest of the following events:

- Sale of the asset
- Termination of the trust
- End of the tax year

In *Kaestner* and *Fielding*, the Courts discussed the location of intangible assets (e.g., stock) in terms of (1) where the custodian of the intangible asset is located; and (2) where the trustee (the legal owner) of the intangible asset resides. [*Kaestner*, 139 S.Ct. at 2218, 2220, 2222; *Fielding*, 916 N.W.2d at 331, 332, n. 8]

### Question 4

Check the box if any part of the trust administration took place in Minnesota at any time during the trust’s 2021 tax year. Include a description of the administration functions that took place in Minnesota in the space provided.

“Administration of the trust” includes, but is not limited to, the following:

- Investment of trust assets
- Conducting trust business
- Distribution of trust assets
- Conducting litigation or administrative proceedings
- Undertaking administrative services including, but not limited to, record-keeping and the preparation and filing of tax returns
- Fiduciary functions, including decisions regarding any of the above

### Question 5

Check the appropriate boxes if any of the following were applicable to the trust in its 2021 tax year:

- The laws of Minnesota were specifically made applicable to the trust;
- The trust documents contain a choice of law provision designating Minnesota for that purpose; or
- The trust was formed under, or its operation is governed by, the laws of Minnesota

There are circumstances when Minnesota state law (or the law of another state) will govern a trust even when the trust agreement designates another state law be applied. [*M.S. 501C.0107*]

### Question 6

Check the box if the trust’s beneficiaries were residents (either full-year or part-year residents) of Minnesota at any time during the trust’s 2021 tax year. Include the names and addresses of all beneficiaries (regardless of their residency status) in the space provided.

A “beneficiary” is a person who has a present or future beneficial interest in a trust or, in a capacity other than that of trustee, has a power of appointment over trust property. [*M.S. 501C.0103(c)*]

Check the box for question 6b if the Minnesota resident beneficiaries had some degree of possession or control of the trust property at any time during the trust’s 2021 tax year. This may include, but is not limited to, the following: (1) the beneficiary received trust assets or income in the tax year; (2) the beneficiary has a legal right to receive trust assets or income in the future; or (3) the beneficiary has a legal right to demand receipt of trust assets or income in the future.

The residency status of an individual beneficiary is determined under M.S. 290.01, subd. 7 and Minnesota Rule 8002.0200. See the Income Tax Fact Sheet 1, *Residency* and Income Tax Fact Sheet 2, *Part-Year Residents* for more information.

### Question 7

Check the box if the trust’s settlors or grantors were residents (full-year or part-year) of Minnesota at any time during the tax year. Include the names and addresses of all settlors and grantors (regardless of their residency status) in the space provided.

A “settlor” and “grantor” is a person, including a testator, who creates or contributes property to a trust. [*M.S. 501C.0103(o)*]

Check the box for question 7b if the Minnesota resident settlors or grantors had some degree of possession or control of the trust property in the trust's 2021 tax year. This may include, but is not limited to, those powers of possession and control that do not cause an irrevocable, *inter vivos* trust to become taxable to the grantor or others as substantial owners under sections 671 to 678 of the Internal Revenue Code.

The residency status of an individual settlor or grantor is determined under M.S. 290.01, subd. 7 and Minnesota Rule 8002.0200. See the Income Tax Fact Sheet 1, *Residency* and Income Tax Fact Sheet 2, *Part-Year Residents* for more information.

### **Question 8**

Check the box if the trust was a testamentary trust and created by a will of a decedent who was a Minnesota resident at the date of death. Also check the boxes for questions 8a and 8b if the trust was probated in Minnesota's courts or the Minnesota courts have a continuing supervisory or other existing relationship with the trust in the trust's 2021 tax year.

The residency status of an individual is determined under M.S. 289A.01, subd. 7 and Minnesota Rule 8002.0200. See the Income Tax Fact Sheet 1, *Residency* and Income Tax Fact Sheet 2, *Part-Year Residents* for more information.

### **Question 9**

If questions 1 through 8 did not apply to the trust, check the box next to question 9. The question 9 box should only be checked if boxes 1 through 8 are blank and do not apply to the trust.

### **Optional Attachments**

We may request the following information when reviewing Schedule M2RT. You may provide the following optional attachments with your Schedule M2RT:

- A copy of the trust agreement(s) and other legal document(s) governing the trust, including all amendments
- A copy of any order(s) from a Minnesota court exercising continued supervisory or other existing relationship with the trust
- A breakdown of distributions made, if any, from the trust to each beneficiary during the tax year
- A breakdown of the allocation of principal or income from the trust during the tax year
- An explanation of the reason for change in residency status