FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-016

Utah State Tax Commission
Pam Hendrickson,
R. Bruce Johnson,
Marc B. Johnson,
D'Arcy Dixon Pignanelli
210 North 1950 West
Salt Lake City UT 84134

Re: Private Ruling Request on Resident vs. Non-Resident Classification of Trusts

Dear Commissioners:

We are writing to request a Private Letter Ruling on whether the trusts described below would be considered as resident trusts for Utah Sate Income tax purposes. This issue is not pending before the Commission in any audit or appeals.

FACTS

In 1942, a resident of Canada executed a Deed of Donation creating separate trusts for his children and their issue. The Deed of Donation (i.e. the equivalent of a trust agreement) provides that the "[d]onation, Deed and Trust and the terms and conditions of this Deed shall, at all times, be construed according to the laws of the Province of Quebec, presently in force". The creator of the trusts is now deceased. The trusts were administered primarily in Canada until approximately 1985 and have been administered primarily in New York since that time. When the administration of the trusts was moved to New York, Quebec legal counsel informally advised New York legal counsel that matters of administration would be governed under New York law, but that matters of construction would continue to be governed under Quebec law. In fact, the Trustees have, in recent years, gone to the Quebec Court for rulings on trust construction and for modification of administrative provisions. Since about 1985, any judicial accountings of the trusts have been in the Surrogate's Court in Nassau County, New York. Trustees' meetings, when held in person, are held in New York. Some trust business is conducted by conference call and by email. The accountants and lawyers for the trusts are in New York and the trusts' records are maintained in New York. The address used by the trusts for business correspondence and on tax returns is the address of the accountants in New York City.

The trusts' assets are primarily intangible investment assets (for example marketable securities and private investments). The trusts do not own any real property or tangible personal property in Utah and do not have any controlling interest in any business in Utah.

There are currently seven Trustees of the trusts, four individuals residing in the state of New York, one individual residing in the state of Connecticut, one individual residing in the state of Maryland and a private trust company incorporated under the laws of Wyoming. Such private trust company ("Trust Company") is owned by descendants of the creator of the trusts. One of those descendants is a Utah resident who serves as one of the directors and officers of the Trust Company. One of the New York resident Trustees is considering resigning as a Trustee in favor of a Utah resident individual (the individual referred to in connection with the Trust Company). No change in the actual administration of the trusts would occur as a result of substituting the Utah resident individual as one of the seven Trustees. In other words, all the trusts would continue to be administered in New York in the manner set forth above. The specific question posed is whether the addition of a Utah resident individual as one of the seven Trustees would result in the trusts being considered as resident trusts for Utah State Income Tax purposes.

APPLICABLE LAW

Utah Code Annotated Section 59-10-201(1) imposes an income tax on a resident trust on the state taxable income of the trust and a Utah income tax return for the resident trust is required for each year that a federal return in required. Section 59-10-103(1)(n) defines a non-resident trust as a trust which is not a resident trust. Section 59-10-103(1)(r) in turn provides that a resident trust is as defined in Section 75-7-103. Section 75-7-103(1)(i) provides that a "resident trust" means:

(ii) a trust, or portion of a trust, consisting of property transferred by Will of a decedent who at the time was domiciled in the state; or

(iii) a trust administered in this state.

Further, Section 75-7-107(4) provides that:

(4) A trust shall be considered to be administered in this state if:

(a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or

(b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.

Finally, Section 75-7-107 (7) provides that "unless otherwise designated in the trust instrument, a trust is administered in the state if it meets the requirements of subsection (4)".

We are not aware of any specific statutory authority, rule or commission opinion on the resident vs. non-resident classification status of a trust administered by multiple Trustees and we are aware of only one advisory opinion on such classification status of a trust administered by a sole Trustee. Citing the predecessor to Section 75-7-103(1)(i)(ii) quoted above, the Commission in a 1998 advisory opinion (98-028) determined that the trust in question would be considered a

resident trust because it was created by a decedent who died domiciled in Utah, even though the individual sole Trustee of the trust had moved to another state. Of course, in our case as noted above, the decedent who created the trust was not a Utah resident at the time of his death. Utah Administrative Code R865-9I-2 and R884-24P-52 offer guidance in determining whether an individual should be determined as a resident of or domiciled in Utah, but do not appear to applicable to the facts stated above.

APPLICATION OF LAW TO FACTS

As noted above, the trusts in this case were not created by a resident of Utah and therefore would only be resident trusts if deemed administered in Utah. Furthermore, because the Deed of Donation creating the trusts does not specify Utah as the place of administration, the trusts would only be considered as resident trusts if the "place of business where the fiduciary transacts ***a major portion of its administration*** is in Utah" (Section 75-7-107(4)(b)) (emphasis added). The phrase 'a major portion if its administration' is not defined under Utah Tax or Trust Law but the phrase suggests that under this section, at least fifty percent of the administration of the trusts would have to be conducted in Utah in order for the trusts to be classified as resident trusts.

In this case, as noted above, virtually all administration has occurred and will continue to occur in New York. If appointed, the Utah resident would become one of seven Trustees and would have a one-seventh vote in decisions and actions with respect to the administration of the trusts (as well as a role in the Trust Company). Therefore, under the facts of this case we respectfully submit that having a Utah resident as one of the seven Trustees of the trust should not result in having the trusts classified as resident trusts for Utah State Income Tax purposes. We recognize that the classification of the trusts as resident or non-resident could change if at some point in the future a 'major portion' of the administration of the trusts moved from New York or some other state, to Utah, but such is highly unlikely to occur.

RULING REQUEST

Accordingly, we request a Private Letter Ruling from the commissioners to the effect that the adding of a Utah resident individual as one of the Co-Trustees of the trusts, under the facts and circumstances of this case, will not result in the trusts being classified as resident trusts for Utah State Income Tax Purposes.

Very truly yours,
NAME

RESPONSE LETTER

March 1, 2010

NAME
ADDRESS

RE: Private Letter Ruling Request – Determination of Whether the Trusts Presented are Resident Trusts for Utah Income Tax Purposes

Dear NAME:

You have requested a private letter ruling on behalf of your client to determine whether certain trusts you describe (the "Trusts") would be considered to be resident trusts for Utah State income tax purposes.

You stated that in 1942 a resident of Canada executed a Deed of Donation creating the separate Trusts for his children and their issue. You explained that the Deed of Donation, which is the trust agreement, states that the "[d]onation, Deed and Trust and the terms and conditions of this Deed shall, at all times, be construed according to the laws of the Province of Quebec, presently in force." Through a subsequent telephone conversation, you stated that the Deed of Donation contains no language indicating that Utah is the place of the Trusts' administration. Additionally, you provided that the creator was not a Utah resident at the time of his death, and through a subsequent telephone conversation, you also provided that the creator was not domiciled in Utah at the time of his death, either.

For the Trusts' administration, you explained:

> The trusts were administered primarily in Canada until approximately 1985 and have been administered primarily in New York since that time. When the administration of the trusts was moved to New York, Quebec legal counsel informally advised New York legal counsel that matters of administration would be governed under New York law, but that matters of construction would continue to be governed under Quebec law. In fact, the Trustees have, in recent years, gone to the Quebec Court for rulings on trust construction and for modification of administrative provisions. Since about 1985, any judicial accountings of the trusts have been in the Surrogate's Court in Nassau County, New York. Trustees' meetings, when held in person, are held in New York. Some trust business is conducted by conference call and by email. The accountants and lawyers for the trusts are in New York and the trusts' records are maintained in New York. The address used by the trusts for business correspondence and on tax returns is the address of the accountants in New York City.

The trusts' assets are primarily intangible investment assets (for example, marketable securities and private investments). The trusts do not own any real property or tangible personal property in Utah and do not have any controlling interest in any business in Utah.

Concerning the Trustees, you explained that there are currently seven, including four individuals residing in New York, one individual in Connecticut, one individual in Maryland, and a private trust company incorporated in Wyoming. You also explained that the private trust company has directors and officers, one of whom is a Utah resident. You further explained that one of the New York individuals is considering resigning as a Trustee in favor of the Utah resident who is the officer/director. You stated that this possible change would not affect the Trusts' actual, future administration.

You stated that your specific question is "whether the addition of a Utah resident individual as one of the seven Trustees would result in the trusts being considered as resident trusts for Utah State Income Tax purposes." You asked that we rule that "the adding of a Utah resident individual as one of the Co-Trustees of the trusts, under the facts and circumstances of this case, will not result in the trusts being classified as resident trusts for Utah State Income Tax Purposes."

Applicable Law

In § 59-10-201, Utah imposes income tax on resident trusts. In § 59-10-103(r), resident trusts are defined the same as in § 75-7-103, which states the following:

> "Resident estate" or "resident trust" means:
> (i) an estate of a decedent who at death was domiciled in this state;
> (ii) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or
> (iii) a trust administered in this state.
>
> § 75-7-103(1)(i).

For § 75-7-103(1)(i)(iii), § 75-7-107(4) states when a trust is considered to be administered in Utah, as follows:

> A trust shall be considered to be administered in this state if:
> (a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or
> (b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.

Additionally, § 75-7-107(7) provides:

> Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection (4).

For § 75-7-107(4)(b), the Utah Code Title 75 does not define "the fiduciary"[1] or "a major portion."[2] Also, Title 75 provides no guidance regarding the effect of having multiple fiduciaries on determining where "a major portion of [the] administration" occurs.

Analysis

To decide whether the Trusts are resident trusts, the Commission first looks to § 75-7-103(1) and its three subsections. The first and second subsections, § 75-7-103(1)(i)(i) and (ii), do not apply because they require a decedent who was domiciled in Utah at the time of his death. This ruling involves a creator who was not a resident of or domiciled in Utah at the time of his death. The third subsection, § 75-7-103(1)(i)(iii), which defines a resident trust as one administered in Utah, requires further analysis.

In connection with § 75-7-103(1)(i)(iii), § 75-7-107(4) provides two ways in which a trust can be considered to be administered in Utah. Under the first way found in § 75-7-107(4)(a), a trust document must state that Utah is the place of administration. However, for this ruling the Deed of Donation contains no such language, so the Trusts cannot meet § 75-7-107(4)(a).[3]

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[1] For Title 59, Chapter 10, fiduciary is defined as follows:

> "Fiduciary" means:
> (i) a guardian;
> (ii) a trustee;
> (iii) an executor;
> (iv) an administrator;
> (v) a receiver;
> (vi) a conservator; or
> (vii) any person acting in any fiduciary capacity for any individual.

§ 59-10-103(1)(g).

[2] Title 75, Chapter 7 uses the phrase "a major portion" in 75-7-204, which states in part:

> (1) The court may not, over the objection of a party, entertain proceedings under Section 75-7-201 involving a trust which:
> . . . .
> (c) has a fiduciary which transacts ***a major portion*** of its trust administration in another state.
> (2) Notwithstanding Subsection (1), the court may entertain a proceeding regarding any matter involving a trust if:
> (a) all appropriate parties could not be bound by litigation in the courts of the other state; or
> (b) the interests of justice would be seriously impaired.
>
> (Emphasis added.)

[3] Likewise, based on the language of the Deed of Donation, § 75-7-107(7) cannot be applied to find that the Trusts are administered in Utah.

Under the second way found in § 75-7-107(4)(b), a trust is administered in Utah when "the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state." Title 75 contains no additional guidance about how "a major portion" is to be determined when multiple fiduciaries are involved. However, for "a major portion," we will consider the administrative work of all seven trustees. Based on your facts, the majority of the administration of the Trusts occurs in New York, where the in-person Trustee meetings are held and where the Trusts' accountants, lawyers, records, and business addresses are located. Also, legal matters are handled in New York and Quebec. Based on your facts, minimal administration would occur in Utah, where the Trust has no real property, tangible personal property, or controlling interests in any business. The only Utah activity mentioned in your letter would be trust business conducted by conference call or email with the Trustee in Utah. Based on these facts, we find that "the place of business where the [Trustees] transact[] a major portion of [their] administration of the [Trusts]" is not in Utah, so the Trusts cannot be resident trusts under § 75-7-103(1)(i)(iii).

In summary, the Trusts as you described them are not resident trusts under Utah law because they do not meet any of the three subsections of § 75-7-103(1).

Conclusion

We find that the adding of a Utah resident individual as one of the co-trustees of the Trusts, under the facts and circumstances you provided, will not result in the Trusts being classified as resident trusts for Utah State income tax purposes. Our conclusions are based on the facts as you described them. Should the facts be different, a different conclusion may be determined. If you feel the Commission has misunderstood the facts as you presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact one of us.

For the Commission,

D'Arcy Dixon Pignanelli
Commissioner

DDP/aln
09-016