
From: McCaffrey, Carlyn <[REDACTED]>
Sent: Friday, February 1, 2013 6:54 PM
To: Yopp, Mark
Cc: Rosen, Arthur; Heller, Amy; Kirschner, Elyse; Jeffrey Epstein
Subject: RE: RE: Re:

Mark,

While you're looking in this area, see if you can find any authority for the proposition that the transfer of an interest in an LLC a majority of the assets of which consist of art, is not subject to the NY sales tax

Carlyn

Carlyn S. McCaffrey | Partner
McDermott Will & Emery LLP | 340 Madison Avenue, New York, NY 10173
[REDACTED] [REDACTED] <mailto:[REDACTED]> | www.mwe.com <http://www.mwe.com>

From: Yopp, Mark
Sent: Friday, February 01, 2013 1:17 PM
To: McCaffrey, Carlyn
Cc: Rosen, Arthur; Heller, Amy; Kirschner, Elyse
Subject: RE: RE: Re:

Carlyn,

What will the trust do with the art after the transfer, and will the grantor ever be given possession of the art after the annuity payments are made?

If the annuity payments consist of transfers of ownership interests and the trust is merely storing the art, then the initial transfer would not be subject to tax because the trust is merely holding the art for resale. If there is an intervening use, then there would be no sale for resale.

If there is an intervening use, then the subsequent transfers of the ownership interests could also be taxable, I am still researching to see if and when a partial transfer of ownership in property is taxable.

Thanks,

Mark W. Yopp | Associate
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From: McCaffrey, Carlyn
Sent: Friday, February 01, 2013 9:49 AM
To: Yopp, Mark
Cc: Rosen, Arthur; Heller, Amy; Kirschner, Elyse
Subject: Re: RE: Re:

Could be either

Carlyn McCaffrey

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On Feb 1, 2013, at 9:46 AM, "Yopp, Mark" <Myopp@mwe.com <<mailto:Myopp@mwe.com>> > wrote:

Carlyn,

I had a question on the annuity payments. Are those payments cash payments, or transfers of ownership interests in the art?

Thanks,

Mark W. Yopp | Associate

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From: McCaffrey, Carlyn

Sent: Thursday, January 31, 2013 4:24 PM

To: Yopp, Mark

Cc: Rosen, Arthur; Heller, Amy; Kirschner, Elyse

Subject: FW: Re:

Can you find any authority under the NY sales tax law that;

1. A sale between a grantor trust and its grantor is either subject to or not subject to the sales tax. or

2. If a grantor retained annuity trust is funded with art and the annuity payments to the grantor are subsequently funded with interests in that same art that:

a. the transfer to the grantor annuity trust is either subject to or not subject to the sales tax

b. the annuity payments made with interests in the art are either subject to or not subject to the sales tax

I know there is authority that grantor retained annuity payments funded with real estate interests will be subject to the real property transfer tax.

If you don't know what a grantor retained annuity trust is you can call either me, Elyse or Amy and we'll explain it.

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From: Jeffrey Epstein [mailto:jeevacation@gmail.com]
Sent: Thursday, January 31, 2013 4:11 PM
To: McCaffrey, Carlyn
Subject: Re: Re:

understood, Im in search of authority, if he had put the art in day one, there wouldn't be a sales tax. on contribution to the grat. would there have been on the pourover.? is there case law , ? my accts agree with me, but i pay them . so i discount it

On Thu, Jan 31, 2013 at 5:05 PM, McCaffrey, Carlyn <[REDACTED]> <mailto:[REDACTED]> > wrote:

Yes - the trust pays and then leon would pay if he took it back.

Remember when you're thinking about this issue that it's not really a substitution power. We refer to it as that but if you look at the trust language, you will see that that's not what it says. It says that the settlor has the power to reacquire and acquire trust property by substituting therefore other property of an equivalent value.

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From: Jeffrey Epstein [mailto:jeevacation@gmail.com <mailto:jeevacation@gmail.com>]
Sent: Thursday, January 31, 2013 4:03 PM
To: McCaffrey, Carlyn
Subject: Re:

so that the trust pays? then if leon wantss to substitutiie cash he pays. i am aware of 1031 but I spoke to a calif sales tax person and she said not under substruion provision. but could not point to authority either

On Thu, Jan 31, 2013 at 4:56 PM, McCaffrey, Carlyn <[REDACTED]> <mailto:[REDACTED]> > wrote:

the person who pays the sales tax is the person who is acquiring the tangible personal property, i.e., the paintings. yes - it could happen multiple times just like it can happen with individuals. If, for example, I hold a painting for investment purposes and make a section 1031 exchange, I pay sales tax. If I make a second 1031 exchange, I pay another sales tax, etc.

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From: Jeffrey Epstein [mailto:jeevacation@gmail.com <mailto:jeevacation@gmail.com>]
Sent: Thursday, January 31, 2013 3:45 PM
To: McCaffrey, Carlyn
Subject:

my irs people , also now can't see substitution provision causing sales tax , as it could happen multiple times over the life of the trust, settlor could not be liable for sales tax , or is the trust the seller and the settlor the buyer?

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