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From: Ada Clapp
Sent: Fri 7/11/2014 2:47:56 PM
Subject: Non-NY LLC for Schwitters Purchase

Hi Jeffrey,

I just spoke with Frank Lord and Mike Kessel of Herrick (Frank is in the Art Law Group and Mike is in the Tax Department) about the non-resident exemption to NY use tax. They are both out of the office on vacation so it was a somewhat short call. As I understand it, the proposal would be to create a non-NY LLC to be owned by Leon and Ronald. The LLC would purchase the Schwitters (outside NY) and later bring the painting into NY. No NY use tax would be payable as we would take the position that the LLC was a non-resident when it acquired the painting.

Mike indicated that he has used this “non-NY LLC” structure for a few clients but that in each case he has specifically told the client that he is not convinced it works. He noted that he would not recommend it to a “high profile” client who is likely to be on the NYS taxing authorities radar. He is not just concerned about the possible imposition of interest and penalties but also about the negative publicity likely to result if such a client is audited. In fact, Mike recently received a call from a New York Times reporter asking about this exact “loop hole”. She was writing a follow-up article to the recent piece about the California sales tax loophole and was looking into “ways wealthy New Yorkers” avoid paying tax (she also asked about 103 exchanges). Mike told her he was completely unfamiliar with the structure and did not advise his clients to do it because he did not want her writing such an article (apparently it is OK to lie to the press when it is in your client’s best interest!).

Shall we have Herrick give us a short memo explaining why they are concerned that the structure does not work? Frank and Mike offered to have a more detailed call on the topic next week if that is your preference. Please let me know and I will arrange.

Thanks.

Ada Clapp

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