

To: jeffrey E.[jeevacation@gmail.com]
Cc: Eileen Alexanderson[REDACTED]
From: Ada Clapp
Sent: Mon 7/14/2014 10:27:09 PM
Subject: Schwitters Purchase

Hi Jeffrey.

I have been thinking more about the proposed LLC structure and have one more point I was hoping you could clarify.

If I understood you correctly, you were assuming that a sales tax will be paid when the painting is purchased and that the LLC structure may avoid a “second sales tax” on the death of the first to die of Ronald and Leon. The second tax is avoided because the survivor buys intangible property (membership interests in a real investment entity) rather than art from the estate of the first to die.

However, I also thought I understood you to say that we should set up a non-NY LLC for the painting. That is what I want to clarify. If the purchasing LLC is not a NY resident, then no sales tax is due on acquisition. So—where is the “first sales tax”? I understood that we would not take the position discussed with Herrick, namely that no NYS use tax is triggered when a non-NY LLC later brings into NY art that it formerly acquired outside NY. If that is correct—then perhaps I misunderstood you and the LLC should be a NY LLC. Would you please clarify.

Thanks.

From: Ada Clapp
Sent: Monday, July 14, 2014 11:25 AM
To: jeffrey E.
Cc: Eileen Alexanderson
Subject: Schwitters Joint Purchase

Good morning Jeffrey,

Before I go back to Herrick, I want to be sure I understand your instructions regarding Leon and Ronald's ownership of the Schwitters. I have outlined what I believe is the proposal below.
Please give me your thoughts on the details noted.

Step 1: Herrick should create a non-NY (presumably Delaware) LLC. Each of Leon and Ronald will 50/50 Members and each will contribute funds sufficient to cover ½ the purchase price of the painting plus ½ the sales tax. The LLC will then acquire the painting. The LLC will have as its business purpose the management of the Schwitters to be held as investment property.

- Before Herrick starts drafting--Has Leon spoken to Ronald about this arrangement and is Ronald in agreement? **Please note that we will need the LLC formed and funded by each of Ronald and Leon in time to pay Christie's.**
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- I assume the LLC will be a member managed entity and that decisions must be unanimous? Please confirm.
- To bolster the LLC's status as an independent investment entity:
 - The terms of use of partnership property should be included in the LLC operating agreement;
 - The LLC should have a separate insurance policy and require capital calls for payment of insurance and other expenses relating to the painting
 - Leon's current agreements with the Neue provide that each party insures under its own blanket policy so Leon and Ronald may prefer to include that provision in the LLC agreement—though Heather and I think that creates a weaker argument that the purpose of the LLC is the manage the investment of the painting;
 - The LLC should request an annual appraisal for insurance purposes

to establish that it is keeping a good eye on its investment.

- What shall we call the LLC?

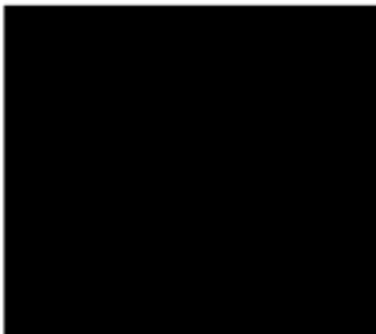
Step 2: Ronald and Leon will enter into a separate Buy Sell Agreement (or we could put this directly in the LLC agreement) whereby:

- The survivor of them has the right within 6 months of the death of the first to die (the “FTD”) to purchase the FTD’s Membership interest from the estate of the FTD at fair market value as finally determined for estate tax purposes in the estate of the FTD.
- If the survivor does not exercise the right to purchase, the FTD’s estate has the right to put the FTD’s Membership interest to the survivor for a stated period of time (same price as above).
- If the survivor does not wish to purchase the FTD’s Membership interests then the FTD’s estate may force a liquidation of the LLC and a sale of the painting.

Please let me know if you want me to discuss any of the above with Leon directly. Thank you.

Ada Clapp

Elysium Management LLC





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