

From: "jeffrey E." <jeevacation@gmail.com>

To: Eileen Alexanderson <[REDACTED]>

Subject: Re: FW: Quick Quesiton

Date: Thu, 18 Sep 2014 20:23:15 +0000

make it 2 loan

On Thu, Sep 18, 2014 at 4:22 PM, Eileen Alexanderson <[REDACTED]> wrote:

Please see email exchange below regarding money for Ben. Should we make a Loan or distribution?

BTW when I told him I would arrange for \$1mil, he said you had talked about \$1-2mil and he said he would like \$1.5mil. ok?

Thanks.

From: Ada Clapp

Sent: Thursday, September 18, 2014 4:15 PM

To: Eileen Alexanderson; Heather Gray

Subject: Fwd: Quick Quesiton

Hi there,

Well I am glad I checked with Alan as the question is apparently unclear and has potential risk. Is a straight out distribution to Ben an option?

Sent from my iPad

Begin forwarded message:

From: "Halperin, Alan S" <[REDACTED]>

Date: September 18, 2014 at 3:56:43 PM EDT

To: Ada Clapp <[REDACTED]>

Cc: "Hurtado, Christopher L" <[REDACTED]>

Subject: RE: Quick Quesiton

Hi Ada,

I have dug deeper into your question and have found nothing directly on point. However, upon reflection, there is a risk that an interest-free loan from a grantor trust to a beneficiary may subject the grantor to imputed interest under Section 7872.

As you know, with a grantor trust, under 671, the grantor is treated as the owner of the underlying assets for income tax purposes. Accordingly, the grantor includes taxable income and enjoys deductions attributable to the trust assets as if he or she were the owner. Presumably Section 7872 – which causes foregone interest to be taxable in connection with a below-market loan – applies as if the grantor is the lender.

On the other hand, it may be argued that an interest-free loan is a form of distribution to the beneficiary in the amount of the imputed interest. Distributions from grantor trusts, as you know, have no income tax consequences. However, the 7872/671 analysis seems to have more support from a technical perspective.

As an aside, I do not feel the same way about the rent-free use of trust property by a beneficiary.

While I concede that there is no definitive authority, there is a risk that, where a grantor trust is the lender, the grantor would be subject to income tax on imputed interest.

Alan S. Halperin | Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas | New York, NY 10019-6064

From: Halperin, Alan S [<mailto:>]
Sent: Wednesday, September 17, 2014 5:27 PM
To: Ada Clapp
Cc: Hurtado, Christopher L
Subject: Re: Quick Quesiton

Interesting. It has been my view that, so long as the loan is made to a beneficiary, there is no income tax consequence of an interest-free loan. Chris, can you investigate?

Alan S. Halperin | Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP

From: Ada Clapp [mailto:[REDACTED]]
Sent: Wednesday, September 17, 2014 05:15 PM
To: Halperin, Alan S
Cc: Hurtado, Christopher L
Subject: Quick Quesiton

If APO1 or APO2 made an interest free loan of \$1 million to Ben, would Leon be taxed on the “deemed” interest as if he “forgave” it? Since the Trustees decided to make the loan—not Leon—does he still get “penalized” for income tax purposes since APO1 and APO2 are grantor trusts? I posed this question to Chris since you are out at long meetings.

Ada Clapp

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[REDACTED]

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Email: [REDACTED]

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