

From: Jeffrey Epstein <jeevacation@gmail.com>

To: "McCaffrey, Carlyn" <[REDACTED]>

Subject: Re: Re:

Date: Thu, 31 Jan 2013 21:33:20 +0000

it seems more like the exchange, ,, any case law. I just spoke to TOM McGraw at Jpm.. and he also says no sales tax, but did not want to opine of course.

On Thu, Jan 31, 2013 at 5:30 PM, McCaffrey, Carlyn <[REDACTED]> wrote:

This is the provision of the regulation that Mark found. It applies to returns of purchased goods. I'm not sure we can extend it to apply to our situation, particularly since the thing being returned is not the tangible personal property and the trust did not acquire its property by purchase.

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Subchapter A Sales And Use Taxes

Part 534 Refunds and Credits

[NYCRR 534.6 Refunds and credits by reason of cancelled sales and returned merchandise.—\(Tax Law, §2;.\).](#)

State & Local Regulations

534.6. Refunds and credits by reason of cancelled sales and returned merchandise.—(Tax Law, §2; 1132(e) , 1139(e)).

(a) Cancelled sales and returned merchandise.

(1) Exclusion from return.

Where a contract of sale has been cancelled or the property returned within the reporting period in which the sale was made, a vendor of tangible personal property or services, a recipient of amusement charges or an

operator of a hotel (as defined in section [1101](#) of the Tax Law) may exclude such receipts, charges, or rents from his sales and use tax return.

(2) Credit where tax previously remitted.

Where a contract of sale has been cancelled or the property returned and the tax collected thereon refunded to the customer, and such tax had been paid and reported on a return by the vendor of tangible personal property or services, a receipt of amusement charges or an operator of a hotel (as defined in section [1101](#) of the Tax Law), an application for refund or credit for the tax paid upon such receipt, charge, or rent shall be filed with the Department of Taxation and Finance within three years from the date when the tax was payable by such person to the Department of Taxation and Finance. The applicant may, as part of the application for credit, take the credit on the return which is due coincident with or immediately subsequent to the time such application is filed. The application for refund or credit shall be subject to the provisions of subdivisions (a), (b), and (c) of section [1139](#) of the Tax Law and section 534.2 of this Part.

(b) Allowance for defective merchandise.

(1) Allowance of credit.

Where an allowance is made for defective merchandise, the purchaser is required to pay the tax upon the amount due after subtracting the allowance from the sales price. Where the tax has been paid on the full selling price, and the vendor refunds to the customer the tax attributable to the allowance which tax had been paid to the Department of Taxation and Finance, a credit or refund of the tax attributable to the allowance may be taken by the vendor in accordance with the procedure described in paragraph (a)(2) of this section.

(2) Exchange of merchandise.

If a purchaser returns defective merchandise to his vendor, and in connection with such return, new merchandise is furnished, the purchaser is required to pay the tax only on the cost of the new article less the allowance for merchandise returned.

(c) Interest. Any credit or refund of taxes paid attributable to cancelled sales and returned or defective merchandise will be made without interest.

(Revised eff. 2-26-92.)

From: Jeffrey Epstein [mailto:jeevacation@gmail.com]
Sent: Thursday, January 31, 2013 4:26 PM
To: McCaffrey, Carlyn
Subject: Re: Re:

re- acquire, if i sell something and take it back, there is not sales tax ultimately due , Did you get an answer from your ny sales tax guy, ?

On Thu, Jan 31, 2013 at 5:05 PM, McCaffrey, Carlyn <[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.

Carlyn S. McCaffrey | Partner
McDermott Will & Emery LLP | 340 Madison Avenue, New York, NY 10173
[REDACTED] | [REDACTED]

From: Jeffrey Epstein [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]> 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.

Carlyn S. McCaffrey | Partner
McDermott Will & Emery LLP | 340 Madison Avenue, New York, NY 10173
[REDACTED] | [REDACTED] | [REDACTED]

From: Jeffrey Epstein [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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