

**From:** Ada Clapp <[REDACTED]>  
**To:** Jeffrey Epstein <jeevacation@gmail.com>  
**CC:** Eileen Alexanderson <[REDACTED]>  
**Subject:** RE: State Income Taxation of the various Black Trusts  
**Date:** Wed, 12 Feb 2014 23:27:02 +0000

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And possibly California tax. I agree that this is not a big issue for \$18 million. May be a different story when it becomes \$100 million. For the long term radar....

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**From:** Jeffrey Epstein [mailto:jeevacation@gmail.com]  
**Sent:** Wednesday, February 12, 2014 4:24 PM  
**To:** Ada Clapp; Melanie Spinella  
**Cc:** Richard Joslin; Alan S Halperin; Eileen Alexanderson  
**Subject:** Re: State Income Taxation of the various Black Trusts

we will just pay the ny tax.

On Wed, Feb 12, 2014 at 7:21 PM, Ada Clapp <[REDACTED]> wrote:

As you know, in connection with rolling out the split Dollar Agreement to which the Leon D. Black 1999 Life Insurance Trust #2 ("Trust #2") is a party, the APO1 Trustees were asked to give Trust #2 a distribution of about \$13 million. Richard Ressler, who is one of the Trustees of the APO1 Trust agreed to the distribution on condition that the Trustees of the APO1 Trust become Trustees of Trust #2 (Norman Brownstein will have to resign as the Trust caps the number of Trustees at 3). This request got me thinking about the identities of the Trustees of Leon's various trusts and state income taxation of these trusts.

As you may know, New York State treats a trust as a grantor trust if the trust is classified as a grantor trust for federal purposes. Accordingly, the state taxation issue arises when Leon's various trusts cease to be grantor trusts for income tax purposes. In the case of Trust #2, that will likely occur if the Trustees decide to surrender

the second to die policies (this is because grantor trust status for this trust is based entirely on the ability to use income to pay premiums on policies insuring Leon's life—where income is not so used, grantor trust status is questionable). If this occurs, Trust #2 will hold about \$18 million in cash (the net cash surrender value of the policies) to be invested and will have to pay its own income tax.

New York State will tax a trust if it is a "Resident Trust" that does not fall within the "Nonresident Resident Trust Exception" (the "Exception"). Because Leon's irrevocable Trusts (including Trust #2) were created while Leon was a NY resident, NY will consider them to be Resident Trusts and tax them on all NY taxable income. However, a Resident Trust is not subject to NY tax if it falls within the Exception, that is if: (i) all trustees are domiciled in a state other than NY; (ii) the entire trust corpus (including real and tangible property) is located outside NY state and (iii) all income and gains of the trust are derived from or connected with sources outside NY state.

At the moment, Norman Brownstein (a Colorado resident) is the sole Trustee of Trust #2. If he cashes in the policies and invests the \$18 million outside NY state and in a manner that avoids NY source income, the trust could avoid NY state tax and be subject solely to Colorado tax (a much lower tax rate). If instead Richard, John and Barry are the Trustees, Trust #2 would not fall within the Exception and could not avoid NY tax. In addition, I understand that California will tax a trust based on one Trustee being a California resident. While there may be NY and California offsets (California's state tax rate is much higher than NY) to adjust for the dual taxation, it may still be more cost effective to have only one state's income tax laws apply. We should consider this issue when Trust #2 has income producing assets (i.e., if the policies are surrendered or when they mature at the death of the survivor of Leon and Debra).

We will have this issue on a much larger scale when Leon's other trusts cease to be grantor trusts for income tax purposes. I understand that it may be highly difficult to avoid NY source income given the size of the trusts involved but I wanted to put this on the radar screen for further consideration, particularly in light of the potential for multiple state income taxation.

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