

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-95 (2) I
Income Tax
February 16, 1995

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I941125D

On November 25, 1994, a Petition for Advisory Opinion was received from Morrison & Foerster, 1290 Avenue of the Americas, New York, New York 10104.

The issue raised by Petitioner, Morrison & Foerster, is whether the fact of Mr. X's donation of certain geological specimens and related books and scientific instruments to a private museum, which will be located in New York, and his activities in New York relating to the construction and development of that museum, will be used in any manner in the determination of whether Mr. X is domiciled in New York for purposes of the New York personal income tax under Article 22 of the Tax Law.

Mr. X has been a Florida domiciliary since 1985. He owns a permanent place of abode in New York but does not spend more than 183 days in New York during any taxable year and, therefore, is a nonresident of New York State.

Mr. X is the grantor and the sole beneficiary of the XYZ Trust, a non-New York grantor trust (based on Mr. X's status as a non-New York domiciliary) formed in 1992 and which is tax exempt (as a grantor trust) under section 671 of the Internal Revenue Code. XYZ Trust is the sole shareholder of ABC, a New York corporation that has no employees and whose activities have primarily consisted of those described herein. Substantially all of ABC's capital has been contributed, either directly or indirectly, by the XYZ Trust.

ABC corporation was formed in 1990, and Mr. A was listed as the sole shareholder at that time (as nominee for Mr. X). Subsequently, the stock certificate identifying Mr. A as sole shareholder was cancelled, and a new certificate was issued listing Mr. X as the sole shareholder of ABC. Mr. X then transferred his ABC stock to the XYZ Trust on December 23, 1992, and a new stock certificate was issued listing the XYZ Trust as the sole shareholder of ABC.

In 1991, ABC purchased a parcel of land in New York for a substantial sum of money. Additional amounts were also expended by ABC for taxes, improvements, and architectural fees. The land was purchased and improved for purposes of constructing a building that will ultimately be given to the DEF Trust as a private museum. Mr. X is the grantor and one of the trustees of the DEF Trust, which was formed in 1988 and is tax exempt under section 501(c)(3) of the Internal Revenue Code.

It is estimated that construction costs for the museum will be substantial, with additional amounts being spent in completing the interior of the building. These funds will be given to ABC by the XYZ Trust as additional contributions to capital.

Once the museum facility has been constructed by ABC, the building and land will be transferred by ABC to the DEF Trust pursuant to an agreement between ABC and the DEF Trust (the "Agreement"). ABC, instead of the DEF Trust itself, has acquired the property and will be constructing the museum, in order to facilitate obtaining construction permits and negotiating contracts with contractors and designers. The Agreement provides that after ABC donates the real property to the DEF Trust, the DEF Trust will operate the facility as a private museum.

The Agreement further provides that Mr. X, on behalf of the DEF Trust, will serve as a liaison between the DEF Trust and the construction and design team retained by ABC. It is anticipated that Mr. X's activities will include the following: meeting with designers, approving plans for the interior and exterior of the facility, selecting materials for the construction and design of the facility, and negotiating contracts. These activities will not increase the amount of time spent by Mr. X in New York.

Mr. X will initially donate geological specimens worth substantial sums, as well as related books and instruments from his personal collection to the DEF Trust. Thereafter, the facility will be open for private access by educational groups. It is also anticipated that New York Regents accreditation will be sought and that teachers will be hired to conduct classes on topics related to geological specimens. After such accreditation, Mr. X will donate the remainder of his personal collection of specimens, books, and scientific instruments.

Section 179-q.7 of the State Finance Law defines a "not-for-profit organization", in part, as a corporation having tax exempt status under section 501(c)(3) of the Internal Revenue Code.

Section 605(c) of the Tax Law as added by Chapter 607 of the Laws of 1994, is applicable to contributions, gifts, bequests, donations, pledges, loans, volunteering, and other activities covered in such Chapter 607, made in taxable years beginning on or after January 1, 1994. Such section 605(c) of the Tax Law states:

Notwithstanding any other provision of any other law to the contrary, the making of a financial contribution, gift, bequest, donation or any other financial instrument or pledge in any amount or the donation or loan of any object of any value, or the volunteering, giving or donation of uncompensated time, or any combination of the foregoing, considered a charitable contribution under subsection (c) of section one hundred seventy of the internal revenue code, or to a not-for-profit organization, as defined in subdivision seven of section one hundred seventy-nine-q of the state finance law, shall not be used in any manner to determine where an individual is domiciled.

The Memorandum in Support of Chapter 607 of the Laws of 1994 provides that the intent of section 605(c) of the Tax Law is to assure that donations of money, objects of value or time to a not-for-profit organization may not be used by the Department of Taxation and Finance in determining resident status. The intent of such section is consistent with longstanding Departmental policy that charitable donations are not considered in determining domicile for New York State personal income tax purposes. (See, TSB-M-84(17)I.)

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Herein, the activities of Mr. X fall under those described in section 605(c) of the Tax Law. Specifically, Mr. X will be donating objects of value, as well as additional funds, and volunteering his uncompensated time on behalf of the DEF Trust, which is an organization qualified as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code. As such, the DEF Trust constitutes a not-for-profit organization within the meaning of section 179-q.7 of the State Finance Law and, therefore, section 605(c) of the Tax Law. As a result, these activities may not be considered in making any determination regarding Mr. X's domicile. Moreover, the contributions of additional funds by Mr. X to the XYZ Trust and the concomitant contribution of capital by the XYZ Trust to ABC, as well as Mr. X's donation of uncompensated time on behalf of both trusts as a liaison with ABC, may not be considered in such context because, pursuant to the Agreement, the DEF Trust will be the ultimate beneficiary of these gifts and activities.

Note that for purposes of this opinion, it is assumed that Mr. X's activities with regard to ABC corporation, prior to the creation of the XYZ Trust, did not affect his status as a non-New York domiciliary.

DATED: February 16, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.