

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-00(1)M  
Estate Tax  
June 5, 2000

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M000317B

On March 17, 2000, a Petition for Advisory Opinion was received from Northern Trust Bank of Florida, NA, 4001 Tamiami Trail North, Naples, Florida 34103.

The issue raised by Petitioner, Northern Trust Bank of Florida, NA, is whether the Estate of Jane H. Hansford is subject to the estate tax imposed pursuant to section 960 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a personal representative of the Estate of Jane H. Hansford. Mrs. Hansford died a resident of Marco Island, Collier County Florida on July 14, 1999. The Last Will and Testament of Mrs. Hansford was admitted to probate and Letter of Administration was issued to Petitioner on September 22, 1999 in the Circuit Court of Collier County, Florida.

Prior to her death, Mrs. Hansford executed two separate trusts funded with real and tangible personal property having an actual situs within New York State. The first trust was a Qualified Personal Residence Trust ("QPRT"), and the second was a Grantor Retained Income Trust ("GRIT").

The QPRT was funded with real and tangible personal property located at 6141 Hicks Road, Naples, New York, and title to the property was duly transferred to the QPRT. Pursuant to the terms of the QPRT Agreement, Mrs. Hansford retained an income interest in the QPRT for a period of 10 years. Upon her death ownership of the real and tangible personal property was transferred to The Jane Harris Hansford Living Trust dated April 29, 1993.

The GRIT was funded with real and tangible personal property located at 5781 and 5777 Seneca Point Road, South Bristol, New York, and title to the property was duly transferred to the GRIT. Similar to the QPRT, the terms of the GRIT granted Mrs. Hansford an income interest in the trust property for a period of 10 years, with ownership transferring to her daughters Elizabeth McGettigan and Jane H. Bronson upon the death of Mrs. Hansford.

Each of the above trusts was irrevocable. Mrs. Hansford was still an income beneficiary under both the QPRT and the GRIT at the time of her death; therefore, pursuant to section 2036 of the Internal Revenue Code the value of the property held by both trusts is included in her gross estate for federal estate tax purposes. Other than her income interests in the QPRT and the GRIT, Mrs. Hansford did not own any property having any actual situs in New York State at the time of her death.

## Discussion

Section 960(a) of the Tax Law provides that a tax is imposed on the transfer, from any deceased individual who at his or her death was not a resident of New York State, of real and tangible personal property having an actual situs in New York State and either (i) includible in his or her federal gross estate, or (ii) which would be includible in his or her New York gross estate pursuant to section 957 (relating to certain limited powers of appointment) if he or she were a resident of New York State.

Section 2036 of the Internal Revenue Code (“IRC”), provides that for federal estate tax purposes, the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale of an adequate and full consideration in money or money’s worth), by trust or otherwise, under which he or she has retained for his or her life or for any period not ascertainable without reference to his or her death or for any period which does not in fact end before his or her death –

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Such transfer of property is known as a transfer “with retained life estate” and, pursuant to section 2036 of the IRC, the transfer is not considered to be fully effective until death where the decedent retained possession or enjoyment of income derived from the property at the time of the decedent’s death. In other words, section 2036 of the IRC subjects those transactions to estate tax that, because of the transferor’s retention of a significant interest in the transferred property (e.g., a life estate or an estate that in fact ends at the transferor’s death), are not complete until the transferor’s death (cf. United State v. Estate of Joseph P. Grace, 395 US 316, 320 [“The general purpose of the statute was to include in a decedent’s gross estate transfers that are essentially testamentary – i.e., transfers which leave the transferor a significant interest in or control over the property transferred during his lifetime”]). Therefore, it is the value of the property transferred to the trust which is taxed under section 2036 of the IRC. In this case, the property transferred is real property located in New York State, and the transfer of such property was only completed at the death of the Mrs. Hansford. Thus, the completed transaction is not the transfer of the interest in the trust (an intangible), it is the transfer of the New York real property. ( Note that where an intangible is transferred, the value of the intangible property would not be taxed by New York where the decedent was a nonresident of New York.)

In this case, Mrs. Hansford executed the QPRT and GRIT as irrevocable trusts, but retained an income interest in the trust property of each trust for a period of 10 years. Mrs. Hansford was still an income beneficiary under both the QPRT and the GRIT at the time of her death. The value of the

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property held by both trusts is included in Mrs. Hansford's federal gross estate pursuant to section 2036 of the IRC.

Accordingly, for purposes of section 960 of the Tax Law, the transfer of the QPRT and GRIT property having a situs in New York State became effective at the time of death of Mrs. Hansford. Therefore, since such property is included in Mrs. Hansford federal gross estate and the trust property consists of real property located in New York State, such property is included in Mrs. Hansford's New York gross estate subject to tax pursuant to section 960 of Article 26 of the Tax Law.

DATED: June 5, 2000

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Division

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