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September 1, 2000

Office of General Counsel
Technical Assistance and Dispute Resolution
Florida Department of Revenue
Post Office Box 7443
Tallahassee, Florida 32314-7443

Re: Laurie D. Lile
REQUEST FOR TECHNICAL ASSISTANCE ADVISEMENT (TAA)

Dear General Counsel:

This letter is a request for a Technical Assistance AdviseMENT (TAA) with respect to a Florida intangible personal property tax issue, submitted pursuant to Florida Administrative Code Rule 12-11.001. The information in this letter is provided as required under F.A.C. Rule 12-11.003. Separate letters accompany this request dealing with (i) the deletion requirement, (ii) a request for expeditious handling, and (iii) the required written declaration by authorized representative. The taxpayer is also requesting, by the cover letter accompanying this letter, a conference in the event an adverse ruling is indicated.

IDENTIFICATION OF INTERESTED PARTIES

The interested parties in this case are:

Taxpayer: Laurie D. Lile, whose social security number is ----- and whose address is 3033 Riviera Drive, Suite 106, Naples Florida, 34103-2746.

Trusts: LAURIE D. LILE INTANGIBLE ASSET MANAGEMENT TRUST #1 dated September 1, 2000 ("Trust #1"), the trustee of which is S. Dresden Brunner.

LAURIE D. LILE INTANGIBLE ASSET MANAGEMENT TRUST #2
dated September 1, 2000 ("Trust #2"), the trustee of which is Laird A. Lile.

LAURIE D. LILE INTANGIBLE ASSET MANAGEMENT TRUST #3
dated September 1, 2000 ("Trust #3"), the trustee of which is Laurie D. Lile.

Trust #1, Trust #2, and Trust #3 are referred to collectively as the "Trusts".

STATEMENT OF RELEVANT FACTS

The taxpayer, a resident of Florida, established the Trusts in the form attached to this letter and has transferred, or by November 1, 2000 will transfer, investments to the trustees of these Trust. These investments, if owned by the taxpayer, would be subject to the Florida intangible personal property tax pursuant to Chapter 199 of the Florida Statutes.

Terms of the Trusts

The terms of the Trusts are all identical to each other, except with respect to the trustee. The terms of the Trusts include the following salient provisions:

The taxpayer waives any right to alter, amend or revoke the trust. (§ 1.2)

The terms of the trust provide that taxpayer may receive income and principal of the trust in the discretion of the trustee, based upon an ascertainable standard. (§ 2.1)

Upon the death of the taxpayer, the remaining trust property will be distributed to the then acting trustee of the taxpayer's revocable trust, as it is then in existence, or if that trust is not then in existence, to the taxpayer's estate. (§ 2.2)

The balance of the provisions of the trust instrument are administrative provisions.

The trustee of each trust is a Florida resident. The trustee of Trust #1 is a person who is not related to the taxpayer. The Trustee of Trust #2 is the taxpayer's husband. The trustee of Trust #3 is the taxpayer.

IDENTIFICATION OF APPLICABLE DOCUMENTS

The applicable documents are the trust instruments which accompany this letter.

REQUEST FOR RULING

The taxpayer is requesting the following rulings:

1. The Trusts are not subject to Florida intangible personal property tax beginning on January 1, 2001 and the Trusts are not subject to the reporting and return filing requirements under Chapter 199 or any applicable provision of the Florida Administrative Code;
2. The trustees of the Trusts are not subject to Florida intangible personal property tax beginning on January 1, 2001 and the trustees of the Trusts are not subject to the reporting and return filing requirements under Chapter 199 or any applicable provision of the Florida Administrative Code; and
3. The taxpayer does not have a beneficial interest beginning on January 1, 2001 as that term is defined for Florida intangible personal property tax purposes in any of the Trusts. Accordingly the taxpayer is not subject to that tax for any property in any of the Trusts. In addition, the taxpayer is not subject to the reporting and return filing requirements under Chapter 199 or any applicable provision of the Florida Administrative Code.

APPLICABLE LAW

The applicable law for addressing this issue includes Chapter 199 of Florida Statutes, and Chapter 12C-2 of the Florida Administrative Code.

TAXPAYER'S ASSERTIONS and SUPPORTING AUTHORITIES

The taxpayer asserts that the requested rulings are an accurate statement of the law. The grounds for this asserted determination and relevant authorities in support of that determination are set forth in the following discussion.

Taxability of the Trusts and the Trustees

Prior to January 1, 2001, a trust which had certain connections with Florida was subject to the annual Florida intangible tax. A foreign trust was treated differently than a Florida trust. The distinction was eliminated by the Florida Legislature during 2000 as a result of changes set forth in Florida Laws 2000-173. As of January 1, 2001, "[t]he trustee of a trust is not responsible for returning the trust's intangible personal property and is not required to pay any annual tax on it." FLORIDA STATUTES §199.052(5) (2000). "Intangible personal property that is owned, managed, or controlled by a trustee of a trust is exempt from annual tax under this chapter." FLORIDA STATUTES §199.183(4) (2000).

The Florida Administrative Code includes certain 'safe harbor' provisions that are applicable to trusts intended to avoid the intangible personal property tax. F.A.C. Rule 12C- 2.0063. These provisions require each trustee to be "domiciled and located outside of Florida. " F.A.C. Rule 12C-2.0063(3). However, "[f]ailure to meet one or more of [these] criteria does not create any presumption with respect to taxable situs". F.A.C. Rule 12C-2.0063(1). In addition, the safe harbor provisions were adopted prior to the legislative changes enacted during 2000. Therefore, the location or domicile of the trustee is no longer relevant for this analysis. No contradictory authority has been ascertained.

Accordingly, neither the Trusts nor the trustees of the Trusts are subject to Florida intangible personal property tax beginning on January 1, 2001 and neither the Trusts nor the trustees of the Trusts are subject to the reporting and return filing requirements under Chapter 199 or any applicable provision of the Florida Administrative Code.

Taxability to Taxpayer

Prior to January 1, 2001, a resident of the State of Florida is subject to intangible personal property tax on a beneficial interest in a trust, even if the trust is not subject to intangible tax. FLORIDA STATUTES §§ 199.032, 199.023. The changes enacted by the Florida Legislature in 2000 reiterate that result, by adding a new subsection (4) to Florida Statutes §199.183, which provides "[t]his exemption does not exempt from annual tax a resident of this state who has a taxable beneficial interest, as defined in s. 199.023, in a trust."

The definition of "beneficial interest" remains essentially unchanged and provides that a resident's interest must be vested and must include "at least a current right to income and either a power to revoke the trust or a general power of appointment, as defined in 26 U.S.C. s. 2041(b)(1)." FLORIDA STATUTES §199.023(7) (2000).

Because the relevant provisions of the statutory definition of "beneficial interest" remain unchanged, the Florida Administrative Code can also be looked to for this portion of the analysis. A 'taxable beneficial interest in a trust is the current right to income coupled with: the right to invade the corpus of the trust; or the right to revoke the trust; or the right to appoint successor beneficiaries without limitation." F.A.C. Rule 2C-2.002(1)(c).

Under the Trusts, the taxpayer does not have a current right to income of the trust. Although the trustee may, in the trustee's discretion, distribute income for the taxpayer's benefit, the taxpayer does not have a current right to income.

Under the Trusts, the taxpayer does not have a power to revoke the trust or a general power of appointment, as defined in 26 U.S.C. Sec. 2041(b)(1). In addition, the taxpayer does

not have the right to invade the corpus of the trust, to revoke the trust or to appoint successor beneficiaries without limitation.

Power to revoke the trust: The trust is irrevocable. (§ 1.2) Therefore, the taxpayer does not have the power to revoke the trust.

General power of appointment, as defined in 26 U.S.C. Sec. 2041(b)(1): A general power of appointment is defined in the referenced portion of the Internal Revenue Code as a "power exercisable in favor of the decedent, his estate, his creditors or the creditors of the estate..." The taxpayer does not have any power to appoint trust property. Therefore, the taxpayer does not have a taxable general power of appointment.

Right to invade the corpus of the trust: The taxpayer does not have the right to invade the corpus of the trust. The trustee, not the taxpayer, has the ability to distribute trust property to the taxpayer. (§ 2. 1.) Therefore, the taxpayer does not have a taxable right to invade the corpus of the trust.

Right to revoke the trust: As discussed above, the taxpayer does not have the power to revoke the trust. A "right" to revoke the trust is the same as a 'power' to revoke the trust. Therefore, the taxpayer does not have a taxable right to revoke the trust.

Right to appoint successor beneficiaries without limitation: No person may directly appoint successor beneficiaries. Therefore, the taxpayer does not have a taxable right to appoint successor beneficiaries without limitation.

Based on the foregoing analysis, the taxpayer does not have any interest in the trust that is included in the second part of the definition of beneficial interest in trust under either FLORIDA STATUTES § 199.023(7) or the Administrative Code Rule 12C-2.002(1)(c). Therefore, the taxpayer does not have a taxable beneficial interest in the trust which would be subject to the Florida personal property intangible tax.

OTHER MATTERS

We would appreciate the prompt issuance of a TAA. The taxpayer needs this ruling in order to make investment decisions that will be directly affected by this ruling. If you would care to discuss this matter, or meet with us, please call me and we will make the appropriate arrangements. When issuing the TAA, please delete all confidential information, in accordance with the Department's procedures.

The issue presented by this request for a TAA will be involved in the preparation of the taxpayer's intangible tax return beginning as of January 1, 2001. There is no audit pending, the

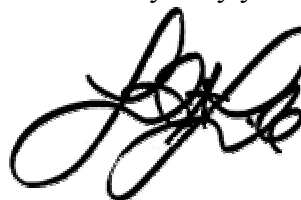
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issue is not being considered by the Department, the issue has not been examined, there is no pending litigation, and the issue has not been ruled on by the Department for the taxpayer or predecessor of the taxpayer. This request is being submitted by the undersigned, who is a member of The Florida Bar in good standing, and a declaration as required by F.A.C. Rule 12-11.008 is filed contemporaneously with this request.

CONCLUSION

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Laird A. Lile", written in a cursive style.

Laird A. Lile

A handwritten signature in black ink, appearing to read "Laurie D. Lile", written in a cursive style.

Laurie D. Lile