

The Commonwealth of Massachusetts



Department of Revenue

Lowell Falconstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

January 4, 1982

("Bank"), a New York bank, is successor trustee of two irrevocable inter vivos trusts created by ("Grantor") on November 15, 1948. On behalf of the Bank, you inquire about the Massachusetts tax status of the trusts.

The trust indenture for each trust provides that income is to be paid to a specified child of the Grantor as long as he lives, and after his death to a specified grandchild of the Grantor as long as he lives, and after the death of the survivor of the child and the grandchild, per stirpes to the issue of the grandchild living from time to time, and upon default of such issue per stirpes to the issue of the child living from time to time, and upon default of such issue per stirpes to the issue of the Grantor living from time to time. Upon termination of the trusts, the principal is to be paid per stirpes to the then living issue of the grandchild, or in default of such issue per stirpes to the then living issue of the child, or in default of such issue per stirpes to the then living issue of the Grantor, or in default of such issue to six specified charitable institutions. Notwithstanding these provisions, the trustees of each trust have uncontrolled discretion to pay all or a portion of the income and principal to specified persons at any time.

The Grantor was a Massachusetts resident at the time the trusts were created and at the time of her death on September 27, 1967. The original co-trustees of the trusts were

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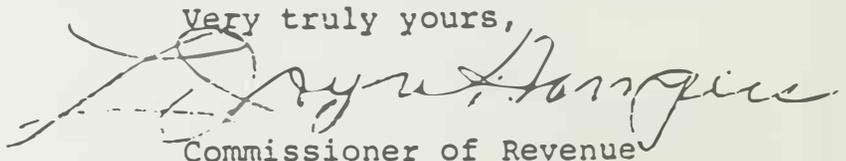
("A") and ("B"), both Massachusetts residents. A died on August 18, 1952, and ("C"), a Massachusetts resident, was appointed co-trustee with B. C resigned as co-trustee on June 27, 1967, and the Bank was appointed co-trustee with B. B resigned as co-trustee on March 31, 1976, and ("D"), a resident of Connecticut, was appointed co-trustee with the Bank.

Estates held in trust by trustees or other fiduciaries not described in General Laws Chapter 62, Section 10(c) are subject to Massachusetts income tax only on their items of gross income from sources within the Commonwealth, that is, on items of gross income derived from or effectively connected with any trade or business carried on in Massachusetts or derived from the ownership of any interest in real or tangible personal property in Massachusetts (G.L. c. 62, ss. 5A, 10(d)). With exceptions not here relevant, trustees or other fiduciaries described in General Laws Chapter 62, Section 10(c) are the following:

"guardians and conservators appointed by a Massachusetts court; trustees under the will of a person who died an inhabitant of the commonwealth; and trustees under a trust created by a person or persons any one of whom was an inhabitant of the commonwealth at the time of the creation of the trust or at any time during the year for which the income is computed, or who died an inhabitant of the commonwealth, any one of which trustees or other fiduciaries is an inhabitant of the commonwealth."

Based on the foregoing, it is ruled that since the two irrevocable inter vivos trusts now have no Massachusetts resident trustees, they are subject to Massachusetts income tax only on their items of gross income from sources within the Commonwealth. Any Massachusetts resident who receives, is entitled to, or to whom income is available from the trusts is subject to Massachusetts income tax upon such income, according to the nature of the income received by the trustees (see G.L. c. 62, Section 11).

Very truly yours,



Commissioner of Revenue