



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #88-8

TO: XYZ, Inc.

SUBJECT: Taxation of Pre-need Burial Contract  
Service Trust Arrangements

REFERENCE: S.C. Code Ann. Section 12-7-10 (Supp. 1986)  
S.C. Code Ann. Section 12-2-410 (Supp. 1986)  
S.C. Code Ann. Section 32-7-20 (1976)

AUTHORITY: Section 12-3-170  
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Whether the customer/beneficiary of a pre-need burial contract service trust arrangement is responsible for the payment of taxes on income earned by his/her account in said trust or whether such tax liability rests with the trustee of the account?

Facts:

XYZ, Inc., a funeral home, provides pre-need burial contract services to its customers. Under these contracts, customers purchase services and some inventory of the funeral home in advance of actual use. The proceeds are then held in constructive trust by the funeral home, and any interest, earnings, etc. which accrue on the account are added to it. Upon the customer's death, the amounts paid in and the amounts accrued are applied to the fixed amount agreed upon in the contract. The balance remaining is then returned to the deceased's estate. The customers may terminate the contract at any time and receive the balance of the account, including accruals.

To aid in administration of these contracts, XYZ, Inc. has arranged for ABC Bank to act as Trustee. The accounts are held in a master trust and each account will receive, as a sub-account, its pro rata share of earnings, income and expenses. At the close of the year, ABC Bank will account to the customer and deliver to him/her the required tax forms regarding the income earned on the individual's account.

Discussion:

South Carolina Code Section 32-7-20 which addresses pre-need burial contracts, states that the "trust fund itself shall be solely liable for all taxes on the fund and its interest, dividends, increases and accretions." Contradicting this are Sections 12-7-410 and 12-7-425 which state that the gross income and taxable income of individuals and trusts are determined under the Internal Revenue Code. (IRC Sections 665 through 668 relating to taxation of certain accumulation distributions from trusts are specifically not adopted.) One of the incorporated federal statutes, Internal Revenue Code Section 676(a), states that "the grantor [of the trust] shall be treated as owner...where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a non adverse party, or both."

The Internal Revenue Service has interpreted Section 676(a) in Revenue Ruling 73-140, and more recently in Revenue Ruling 87-127, to mean that the customer in each of these pre-need burial contracts is responsible for the taxes owed on the accrued earnings.

The issue then is which of the two conflicting statutes is controlling in the instant case. The South Carolina Supreme Court said in Jolly v. Atlantic Greyhound Corporation et al, 207 S.C. 1, 35 S.E. 2d 42 (1945), that where two sections of a statute are irreconcilable, the subsequent section, or the "last legislative expression," prevails over the prior one. This rule is used only where it is impossible to harmonize the two sections or statutes in some acceptable way. Such is the case here where the two statutes are in conflict.

As for the enactment dates of the two statutes, South Carolina Code Section 12-7-410 is the more recent of the two, having been enacted in 1985. South Carolina Code Section 32-7-20 was enacted in 1962.

Applying, then, the "last legislative expression" rule, Section 12-7-410 is the controlling statute. As previously stated, Section 12-7-410 requires the grantor of the trust to be treated as owner of it and therefore liable for taxes arising from accretions to his/her account.

Conclusion:

The customer/beneficiary of a pre-need burial contract in which the proceeds are held in trust until the death of the customer or revocation of the contract is the owner for income tax purposes and must include interest or other income to the account in his/her gross income for the year of accrual.

SOUTH CAROLINA TAX COMMISSION

Hunter Howard, Jr., Chairman

John M. Rucker, Commissioner

Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina  
March 30 \_\_\_\_\_, 1988