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Person To Contact:

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Telephone Number:

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PLR-117188-08
Date:
October 10, 2008

Legend

X =

Trust 1 =

Trust 2 =

LLC =

State =

a =

b =

c =

d =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to your letter dated April 7, 2008, submitted on behalf of X, Trust 1, Trust 2, and LLC, as their authorized representative, requesting rulings on several issues arising from agreements entered into among the parties.

In 1971, the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. 1601 et seq., settled the Alaska natives' claims to land and resources. ANCSA implements the settlement of Native Alaskans' aboriginal land claims by providing for the conveyance of certain lands and money to Alaska Native Corporations (ANC) established by qualified Alaska natives as compensation. The ANCSA provided that all United States citizens with 1/4 or more of Alaska Indian, Eskimo, or Aleut blood, who were living on December 18, 1971, were qualified to participate in the settlement. The natives who qualified to participate in the settlement were allowed to enroll as stockholders and receive stock in one of the twelve regional corporations and in one local village corporation created under the ANCSA to receive assets.

The ANCSA, as originally enacted, provided that for a period of 20 years after December 18, 1971, the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated. This limitation, however, did not apply to transfers of stock pursuant to a court decree of separation, divorce or child support; by a stockholder who is a member of a professional organization, association, or board which limits the ability of that stockholder to practice his profession because of holding such stock; or by inter vivos gift to certain family members. The ANCSA also provides that upon the death of any stockholder, ownership of such stock shall be transferred to any person in accordance with his last will and testament or under the applicable laws of intestacy, except that during the twenty-year period after December 18, 1971, such stock shall carry voting rights only if the holder thereof, through inheritance, is also an Alaska native.

Subsequent amendments to the ANCSA generally extend beyond December 18, 1991, the alienability restrictions on the settlement common stock of an ANC unless and until the shareholders of the corporation decide to terminate them. 43 USC 1629c. If the shareholders vote to terminate the alienation restrictions on the stock, all settlement common stock is cancelled as a matter of law and is replaced with unrestricted replacement common stock. 43 USC 1606(h)(3). Thereupon, the special character of the corporation as an ANC created under ANCSA ceases and the corporation becomes a regular domestic corporation subject to regulation under securities laws.

To accommodate the desire of certain ANCs to transfer a portion of their assets out of the corporate form, the ANCSA Amendments of 1987 authorizes the conveyance of certain assets of an ANC to a state-chartered settlement trust (Settlement Trust).

The general purpose of the Settlement Trust is to preserve native heritage and culture and to promote the health, education, and economic welfare of its beneficiaries, the shareholders of the transferor ANC, and their lawful successors. The Settlement Trust is to be used to insulate permanently land, as well as other assets transferred to it, from the business risks undertaken by the ANC. Such Settlement Trusts may not operate as a business nor may they make a subsequent transfer of land or interests therein except for a reconveyance to the transferor corporation, if such reconveyance is authorized in the trust instrument. 43 USC 1629e.

If the board of directors of an ANC adopts a resolution to establish a Settlement Trust, the resolution to establish the trust must be submitted to a vote of the corporation's shareholders for approval. 43 USC 1629b(a)(3) and 1629b(b). The shareholders, however, are not required to approve the conveyance of any assets by the corporation to the Settlement Trust unless all or substantially all of the assets of the corporation are to be conveyed. 43 USC 1629e(a)(1)(B).

Section 646 of the Internal Revenue Code was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001. Section 646 addresses several aspects concerning the tax treatment of Settlement Trusts.

The information submitted states that X is organized as an ANC under the provisions of ANCSA and Alaska state law. In Date 1, X established Trust 1, a Settlement Trust, to provide long-term pro-rata cash distributions to its shareholders. Trust 1 is in operation and has been making such distributions for approximately a decade.

In Date 2, X established Trust 2, a Settlement Trust, to provide non pro-rata educational and funeral benefits to its shareholders.

In Date 3, X established LLC under State law as a limited liability company to facilitate and coordinate the investments of X, Trust 1, Trust 2, and their wholly owned entities. Interests in LLC are divided into Units. X, Trust 1 and Trust 2 are the current unitholders of LLC. Only X, Trust 1, and Trust 2, or any entity wholly owned by any of them may own Units in LLC.

LLC now proposes to loan money to X. The loan would be in the form of a revolving line of credit for a period lasting approximately one year and would not exceed \$a. The loan could be renewed for additional periods at the discretion of LLC. X will provide a secured promissory note and a loan agreement. The secured promissory note will specify that amounts advanced under the loan will bear interest at the prime rate plus b%. The loan agreement will require that the repayment of the line of credit will be secured by a first position security interest in X's entire equity interest in one of its subsidiaries that owns a real estate development. X represents that the value of the subsidiary's real estate is \$c. Furthermore, LLC's operating agreement limits the

total of all loans made from LLC to X to no more than d% of the aggregate fair market value of LLC assets, net of liabilities and requires that adequate security must be given and adequate interest rate must be paid.

Trust 1 and Trust 2 have each made an election under § 646.

X has received three private letter rulings (PLR 9329026, PLR 9824014, PLR 200532041) pertaining to Trust 1, Trust 2 and LLC. X represents that all the representations set forth in those prior letter rulings remain true and correct.

A Settlement Trust may elect to have the provisions of § 646 apply to the trust and its beneficiaries. Section 646(a) provides that if a § 646(c) election is in effect with respect to any Settlement Trust, the provisions of § 646 shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust. Provided that Trust 1 and Trust 2 have met all the requirements to be Settlement Trusts, including making the necessary election under § 646(c), we conclude that § 646 governs the income tax treatment of Trust 1 and Trust 2. Accordingly, subpart E of part 1 of subchapter J of chapter 1 of the Code (the grantor trust provisions) will not govern the income tax treatment of Trust 1 and Trust 2 during any period that Trust 1 and Trust 2 have § 646(c) elections in effect.

Section 671 provides that if the grantor of a trust or another person is treated as the owner of any portion of the trust, that person's taxable income and credits shall include the income, deductions, and credits of the trust attributable to that portion of the trust to the extent that such items would be considered in computing the taxable income or credits of an individual.

Sections 673 through 679 specify the circumstances under which the grantor or another person will be regarded as the owner of a portion of a trust. Based on our examination of the LLC Operating Agreement, the Promissory Note and the Revolving Line of Credit Agreement we conclude that the loans (including the line of credit) do not cause X or any other person to be treated as the owner of any portion of Trust 1 and/or Trust 2 under §§ 673, 674, 676, 677, 678, or 679.

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if under the terms of the trust agreement or circumstances in respect of which the grantor has certain administrative powers.

Section 675(2) provides that a power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general leading power to make loans to any person without regard to interest or security.

Section 1.675-1(b)(2) of the Estate Tax regulations, provides that the existence of a power exercisable by the grantor or a non-adverse party, or both, which enables the grantor to borrow the corpus or income of the trust, directly or indirectly, without adequate interest or adequate security. However, this paragraph does not apply where a trustee (other than the grantor acting alone) is authorized under a general lending power to make loans to any person without regard to interest or security. A general lending power in the grantor, acting alone as trustee, under which he has power to determine interest rates and the adequacy of security is not in itself an indication that the grantor has power to borrow the corpus or income without adequate interest or security.

X asks for rulings as to: 1) Whether a loan (including the line of credit) between LLC and X would cause X to be treated as an owner of any portion of Trust 1 or Trust 2 under § 675(2), because X has a power to undertake any loan (including the line of credit) without providing adequate interest or adequate security; and 2) Whether the loan (including the line of credit) will cause X to be treated as the owner of the corpus and income of Trust 1 and Trust 2 under § 675(3).

Our examination of the terms of LLC's loan to X reveals none of the circumstances that cause X to have power to borrow without adequate interest or security for purposes of § 675(2).

The trustees of Trust 1 and Trust 2 are not "employees" of X as that term is defined in § 675(c)(2) merely because they are directors of X. See Rev. Rul. 66-160, 1966-1 C.B. 164. Therefore, the trustees are not related or subordinate trustees subservient to the grantor for purposes of § 675(3) merely because they are also directors of X.

The circumstances otherwise attendant on the operation of Trust 1 and/or Trust 2 will determine whether the grantor will be treated as the owner of any portion of the trusts under § 675(1), (3), or (4). This is a question of fact, the determination of which must be made by the Director, Field Operations, with which the parties file their tax returns.

Accordingly, based solely on the facts presented and representations made in this ruling request, and viewed in light of the applicable law and regulations, we rule as follows:

1. The loans (including the line of credit) do not affect in any manner the § 646 elections that both Trust 1 and Trust 2 have made and that the elections remain valid.

2. The fact that LLC will loan monies to X under the secured promissory note and the loan agreement will not in itself cause X or any other person to be treated as the owner of any portion of Trust 1 and/or Trust 2 under §§ 671-679.

3. Based solely on the information submitted, and the representation that the facts and representations in the prior letter rulings remain true and correct, we rule that the loans (including the line of credit) does not affect the rulings given to: X and Trust 1 in PLR 9329026; X, Trust 1 and Trust 2 in PLR 9824014, or X, Trust 1, Trust 2 and LLC in PLR 200532041 and such rulings will remain in full force and effect, subject to the extent of any conditions stated in those letter rulings.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and Income Tax Regulations other than those expressed in the prior letter rulings, or about the tax treatment of any conditions existing at the time, or effects resulting from, the proposed transaction that are not specifically covered by the above ruling or those rulings set forth in the prior letter rulings.

A copy of the letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: