



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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CC:PA:LPD:PR (Notice 2011 – 101)

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And via Electronic Mail: notice.comments@irsounsel.treas.gov

Re: Comments from the National Conference of Commissioners on Uniform State Laws on Transfers by a Trustee from an Irrevocable Trust to Another Irrevocable Trust (often referred to as “Decanting”) in response to Notice 2011 – 101 (December 21, 2011)

Dear Ladies and Gentlemen:

The National Conference of Commissioners on Uniform State Laws (the “Uniform Law Commission” or “ULC”) is pleased to submit these comments in response to Notice 2011 – 101, 2011 – 52 IRB 932 (December 21, 2011), which requested comments regarding various consequences and potential consequences of the transfer by a trustee of assets from one irrevocable trust to another irrevocable trust, often referred to as decanting.

As background for our comments, I would like to say a few words about the Uniform Law Commission. The ULC provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. Established in 1892, the ULC is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Each of the more than 300 uniform law commissioners are members of the bar, and although some commissioners serve as state legislators, most are practitioners, judges, and law professors. They serve for specific terms, and receive no salaries or fees for their work with the ULC. The state uniform law commissioners come together as the Uniform Law Commission for one purpose—to study and review the law of the states to determine which areas of

law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It must be emphasized that the ULC can only propose—no uniform law is effective until a state legislature adopts it. The ULC is a working organization. The uniform law commissioners participate in drafting specific acts; they discuss, consider, and amend drafts of other commissioners; they decide whether to recommend an act as a uniform or a model act; and they work toward enactment of ULC acts in their home jurisdictions. More information may be found at the ULC website, www.uniformlaws.org.

The ULC currently has a committee drafting a uniform act dealing with powers of appointment. That act specifically deals only with powers held in a nonfiduciary capacity. The ULC also has a study committee preparing to draft a uniform act that would deal with the exercise of a fiduciary power to transfer assets from one irrevocable trust to another, often called a decanting power. As of the date of this letter, there are approximately 13 states that allow by specific statute such transfers, and many more states may allow them pursuant to the common law or more general statutes. The Federal income and transfer tax consequences of decanting are generally uncertain, and the provisions of the various state statutes, and common law provisions, may indeed produce different Federal tax results. The ULC believes it in the public interest to create a uniform act that would provide certainty both as to the state law property consequences and the Federal income and transfer tax consequences of fiduciary transfers from one trust to the other. Therefore, the ULC intends to monitor closely the pronouncements and determinations of the US Treasury and Internal Revenue Service regarding those income and transfer tax consequences as part of its drafting process.

The ULC takes no position with respect to Federal tax policy. However, when Federal tax policy - - particularly Federal transfer tax policy - - and the state law of estates, gifts, wills, and trusts intersect, the ULC is interested in creating acts that have certain and predictable tax consequences to the greatest extent reasonably possible. Thus, the ULC would be pleased to keep the appropriate Treasury and Internal Revenue Service personnel informed as to its efforts and to provide any technical assistance regarding the various statutes and common law provisions that allow fiduciary transfers which might be helpful (for example, the ULC has compared the various existing statutes and other provisions as part of its existing study committee).

Thank you for your request for comment and please let us know when we can be of any assistance to you.

Sincerely,

A handwritten signature in cursive script that reads "Michael Houghton".

Michael Houghton
President
Uniform Law Commission

cc: Harriet Lansing, Chair, Executive Committee
John A. Sebert, Executive Director
Stan Kent, Chair, Trust Decanting Study Committee
Turney P. Berry, Trust Decanting Study Committee
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