

Multistate Tax Commission



**Recommendation for Adoption of a Uniformity Provision
Specifying the State of Residence for Funeral Trusts**

Hearing Officers' Report

May 3, 2001

I. Introduction.

By direction of the Multistate Tax Commission ("MTC") Executive Committee, the appointed hearing officers held a public hearing on March 19, 2001, at 9:00 a.m. at the St. Petersburg Hilton Hotel, ETC Conference Room, St. Petersburg, Florida. The hearing was duly and properly noted in accordance with Bylaw of the MTC. (See Exhibit A). The purpose of the hearing was to gather public comment on the proposal developed by the MTC Uniformity Committee of a uniformity provision specifying the State of residence for funeral trusts ("uniformity proposal"). Frank D. Katz, Deputy General Counsel, and Paul Mines, General Counsel, acted as Hearing Officers. (See Exhibit B). The Hearing Officers have included in this report under II. Background, the uniformity proposal that was developed by the Uniformity Committee and thereafter referred to this public hearing.

The Hearing Officers jointly recommend to the MTC that the proposal be adopted as a uniformity recommendation of the Commission and to that end that the Executive Committee authorize the conduct of the requisite survey specified by Bylaw 7 of the MTC.

II. Background.

This matter initially arose within the MTC, because industry was desirous of promoting maximum uniformity in the recognition of "funeral trusts," a special species of grantor trusts under a recently enacted amendment to the Internal Revenue Code of 1986 that allows for entity reporting and entity tax payment in limited circumstances. See IRC § 685. The Uniformity Committee polled the membership and the results of that poll indicated there was little need for a uniformity recommendation on adopting conforming amendments to state tax codes, because most of the membership had already accomplished that task.

Polling did reveal, however, considerable diversity among the States as to which State would assert jurisdiction to tax funeral trusts. As a result of recognizing this lack of uniformity in the determination of the residence of a trust, the Uniformity Committee commenced to address the development of a uniformity proposal on the residence of funeral trusts. The Uniformity Committee and industry, including the International Cemetery and Funeral Association, worked on the proposal in the Income and Franchise Tax Subcommittee, to which the matter was referred.

The subcommittee determined that most States, as a matter of consumer protection laws, have enacted statutory provisions directing the location for the establishment of funeral trusts, generally in the State where the funeral home or cemetery arranging for the pre-need services is located. From this understanding, the subcommittee recommended the following provision for enactment in state income tax statutes (and/or regulations, to the extent, a State has rule-making authority to accomplish this result) defining residents:

A resident of this state includes

* * *

a trust whose trustee has elected treatment as a Qualified Funeral Trust pursuant to ^{alternative 1:} [§685 of the Internal Revenue Code of 1986] ^{alternative 2:} [citation to specific state code provision establishing “qualified funeral trust”] where, at the time of the initial funding of the trust, the trust is required to be established under the laws of this state, or, in the absence of such a requirement, where a funeral home or cemetery located in this state is identified to provide the services or merchandise or both under the terms of pre-need contract requiring the establishment of the trust.

The full committee approved the recommendation and the Executive Committee authorized this public hearing for the receipt of public comment and the reactions of the appointed Hearing Officers.

III. Summary of Written Responses.

The Hearing Officers received no written responses to the proposal in this hearing process.

IV. Public Comment at the Hearing

Hearing Officer Frank Katz opened the forum for formal public comment.

Mr. Robert Topp, State and Local Tax Director for Service Corporation International, expressed his appreciation to the MTC for proceeding with the uniformity proposal. He affirmed that the industry was not looking for a tax planning opportunity but simply

bright-line guidance to assist trustees in filing state tax returns. He promised help with lobbying state legislatures and tax agencies to obtain enactment of the proposal.

Mr. Robert Fells, External Chief Operating Officer and General Counsel of the International Cemetery and Funeral Association, added his thanks and promise of support. When asked whether he knew of any possible opposition to the proposal, he noted that certain smaller and more traditional elements of the industry have long shown resistance to pre-need contracts. These elements might oppose this uniformity proposal on the theory that preserving ambiguity in state tax treatment of funeral trusts would make pre-need contracts more complex and less attractive, overall a good thing from their perspective. Mr. Fells did not expect principled or significant opposition.

Mr. Ted Spangler, Assistant Attorney General from Idaho and Chair of the MTC Uniformity Committee, rejoiced in the opportunity to provide uniformity in a non-controversial area. He raised an issue of multiple beneficiaries in a single trust. Mr. Topp noted that federal law taxes each separate beneficiary as a separate item, so that a graduated tax rate is not inflated by having multiple beneficiaries on a contract.

Mr. Keith Getschel, Assistant Director for the Corporate and Sales Tax Division of the Minnesota Department of Revenue, expressed concern about having a separate definition for the residence of funeral trusts as compared to other trusts, but was reassured by the fact that the Internal Revenue Code treats funeral trusts in a unique manner, justify similar separate treatment in this uniformity proposal.

V. Hearing Officer Recommendations

The Hearing Officers jointly recommend that the Commission adopt the proposal as its uniformity recommendation and to that end that the Executive Committee authorize the conduct of a survey of the Member States as required by Bylaw 7.

The uniform provision has not changed from that recommended by the Uniformity Committee. If adopted, the MTC would recommend for adoption by the States a uniform provision of their income tax laws reading as follows:

A resident of this state includes

* * *

a trust whose trustee has elected treatment as a Qualified Funeral Trust pursuant to ^{alternative 1:} [§685 of the Internal Revenue Code of 1986] ^{alternative 2:} [citation to specific state code provision establishing “qualified funeral trust”] where, at the time of the initial funding of the trust, the trust is required to be established under the laws of this state, or, in the absence of such a requirement, where a funeral home or cemetery located in this state is identified to provide the services or merchandise or both

under the terms of pre-need contract requiring the establishment of the trust.

Respectfully submitted this 3rd day of May 2001,

Frank D. Katz

Paul Mines

**Final Report of the Hearing Officers
Regarding the
Proposed Recommendation to States for
Enactment of a Uniform Provision
Specifying the State of Residence for Funeral Trusts**

Exhibits

Exhibit A: Notice of Public Hearing, March 19, 2001, with Affidavit of Compliance.

Exhibit B: Memorandum of Appointment of Hearing Officers



NOTICE OF PUBLIC HEARING

Regarding a

UNIFORMITY PROPOSAL CONCERNING RESIDENCE OF FUNERAL TRUSTS

The MULTISTATE TAX COMMISSION ("MTC") has scheduled a public hearing to obtain comments from interested parties on a proposed recommendation to States for enactment of a uniform provision specifying the state of residence for funeral trusts. The proposed language reads as follows:

A resident of this state includes

* * *

- (a) a trust whose trustee has elected treatment as a Qualified Funeral Trust pursuant to ^{alternative 1:} [§685 of the Internal Revenue Code of 1986] ^{alternative 2:} [citation to specific state code provision establishing "qualified funeral trust"] where, at the time of the initial funding of the trust, the trust is required to be established under the laws of this state, or, in the absence of such a requirement, where a funeral home or cemetery located in this state is identified to provide the services or merchandise or both under the terms of pre-need contract requiring the establishment of the trust.

The hearing on this proposal will be held at the time, date and location specified below:

MONDAY, MARCH 19, 2001, 9:00 A.M. (EASTERN)
ECC Boardroom
St. Petersburg Hilton Hotel
333 First Street South,
St. Petersburg, Florida 33701-4342

Public comment is sought on whether the MTC should recommend adoption of the proposal. The full text of the proposal has been provided with this notice. (The proposal and this notice are available on the MTC's website at www.mtc.gov). General comments about the proposal as well as comments regarding the specific language of the provisions are encouraged.

The MTC has developed this proposal at the request of, and with considerable input from, the International Cemetery and Funeral Association.

All comments received as part of the hearing process will be set forth in a hearing officers' report that will be submitted to the MTC Executive Committee. The MTC Executive Committee will read what you say and then will consider the proposal for appropriate action. See The MTC's Uniformity Recommendation Development Process at step seven, available at www.mtc.gov/uniform/9steps.htm

The hearing officers for this matter are Paull Mines and Frank D. Katz. Please submit all questions, comments and correspondence regarding this hearing matter to: Hearing Officer Frank D. Katz, Multistate Tax Commission, 444 N. Capitol Street, N.W., Suite 425, Washington, D.C. 20001-1538, Phone: (202) 624-8682, Fax: (202) 624-8819, E-mail: fkatz@mtc.gov

All interested parties are invited to participate in this public hearing. Parties wishing to make formal oral presentations are requested to notify the hearing officers in writing at least two (2) working days prior to the hearing date. Written comments are acceptable and encouraged. They may be submitted at any time prior to or on the hearing date or by such later date as may be announced for the closing of the public hearing period. Interested parties may participate by telephone. Please contact either hearing officer for specific instructions on how to connect by telephone.

Multistate Tax Commission



Memorandum of Appointment of Hearing Officers

To: Record of the Hearing on Uniform Treatment of Funeral Trusts
From: Dan R. Bucks, Executive Director
Date: February 13, 2001
Re: Appointment of Hearing Officers for Proposal on Uniform Treatment of
Funeral Trusts

The Executive Committee of the Multistate Tax Commission approved at its meeting held on November 16 and 17, 2000, the conduct of a public hearing on the Uniform Treatment of Funeral Trusts. Pursuant to that action and the Multistate Tax Compact, I hereby appoint Paull Mines, General Counsel, and Frank D. Katz, Deputy General Counsel as Hearing Officer and Assistant Hearing Officer, respectively, for this proposal. Further, I request that they proceed with the conduct of this hearing.

Dan R. Bucks, Executive Director