

**In The Matter of the Petition of "AAAA"**

**for a Declaratory Ruling**

**DOC #4385, Effective March 8, 1988**

Pursuant to RSA 541-A:1, IV, RSA 541-A:2, I (d), and PART Rev 209 New Hampshire Code of Administrative Rules, the "A A A A", of "X X", New Hampshire, has petitioned the Department of Revenue Administration for a declaratory ruling concerning the New Hampshire tax consequences under the Interest and Dividends Tax (RSA 77) of moving the designated situs of the trust from the State of "Y Y" to the State of New Hampshire.

**The following facts are presented:**

- (1) The trust was originally founded in 1961 in the city of "Y Y Y Y". Since its formation, the trust has been administered from "Y Y" and since 1972 from "Z Z".
- (2) The trust maintains its only office in "ZZ" and all meetings of the trustees since 1972, with the exception of 1984, have been held at the trust office in "ZZZZ".
- (3) The trust receives a modest amount of income from its investments.
- (4) No beneficiaries receive any income from the trust. All income is used to defray expenses.
- (5) The trust is composed of transferable shares.
- (6) Some beneficiaries of the trust are residents of New Hampshire.
- (7) The purpose of the trust is to purchase and maintain a policy or policies of group insurance for the benefit of the employees of the contributing members of the "A A" .

**RSA 77:3 lists the taxpayers who are taxable under the interest and Dividends tax. It states;**

77:3 WHO TAXABLE. Taxable income is that income received from interest and dividends during the tax year prior to the assessment date by:

I. Individuals who are inhabitants or residents of this state for any part of the taxable year whose gross interest and dividend income from all sources exceeds \$1,200 during that taxable period.

II. Partnerships, associations and trusts, other than a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3, the beneficial interest in which is not represented by transferable shares, whose gross interest and dividend income from all sources exceeds \$1,200 during the taxable year.

III. Fiduciaries deriving their appointment from a court of this state whose gross interest and dividend income from all sources exceeds \$1,200 during the taxable year. Based on the specific circumstances represented, the Department of Revenue Administration hereby rules as to the application of the New Hampshire Taxation of Incomes (RSA Chapter 77) with respect to the "A A A A".

RSA 77:3, II requires that trusts which are not represented by transferable shares be considered within the ambit of the interest and dividend tax. The "A A A A" is composed of transferable shares, (Fact 5). The trust therefore, is not a taxable entity under RSA 77:3, II. The trust is not a taxable entity under any of the other categories of RSA 77:3.

It is therefore, the beneficiaries of this trust who are taxable in New Hampshire under RSA 77:3, I to the extent that the trust distributes its income to them as a dividend. This income would be classed as a dividend. However, because the trust distributes no income to beneficiaries (Fact 4) there would seem to be no liability on the part of those individuals under RSA 77.

Everett V. Taylor, Commissioner