IN THE MATTER OF THE PETITION OF

"Petitioner"

FOR A DECLARATORY RULING

Doc#6183, Effective 2/12/96

Pursuant to RSA 541-A:1, IV, 541-A:2, I(d) and Rev. 209.01 et seq., "Petitioner" .... petitioned the Department of Revenue Administration with respect to certain liability under the New Hampshire Legacy and Succession Tax.

Determination Requested by the Petitioner

The Petitioner requests a ruling stating that a trustee or employer sponsor of a pension or profit-sharing plan has no personal liability for New Hampshire inheritance tax or estate tax if it distributes a deceased employee's pension or profit-sharing plan account to the decedent's estate, or to the designated beneficiary of the account, without withholding taxes or obtaining a tax consent or waiver from the New Hampshire Department of Revenue Administration ("Department").

Facts Presented by the Petitioner

1. The Petitioner represents a corporation employing people in New Hampshire. The corporation sponsors several qualified pension and profit-sharing plans for the benefit of its employees. Accounts within these plans may contain a combination of cash, securities issued by either the corporation or other companies, and other assets. Pension plan accounts are funded through a combination of employer and employee contributions.

2. Upon the death of an employee, the assets of that employee's account are distributable to the named beneficiary of the account or to the employee's estate. The trustee then requests the named beneficiary or, if no beneficiary is named, the executor to provide a certified death certificate for the deceased employee. When appropriate, the trustee also requests the date of birth and the Social Security number or taxpayer identification number of the beneficiary.

3. After receipt of the requested documentation, the trustee distributes the assets of the account to the beneficiary or to the estate. Generally, the trustee does not withhold any federal, state or local taxes from the distribution. The trustee also does not obtain state tax consents or waivers for such a distribution.

REVISED STATUTES ANNOTATED (RSA) AT ISSUE

RSA 86 et seq

RSA 87:4

PETITIONER'S REPRESENTATIONS

To the best of the Petitioner's knowledge, the issue which is the subject of this petition: (a) is not under examination by the Department; (b) has not been examined by the

Department; (c) is not under consideration by the Department in connection with a return of a prior period; and (d) is not pending in litigation.

Findings

In view of the foregoing facts and representations, and specifically based upon them, the Department finds the following.

RSA chapter 86 establishes a scheme for taxation of legacies and successions. Pursuant to RSA 86:6, I, the assets within a deceased employee's pension or profit-sharing plan account may be taxable to the beneficiary who receives the assets. RSA 86:6, II lists the categories of beneficiaries who are exempt from the legacy and succession tax. Pension or profit-sharing plan account assets that pass to any beneficiary who does not fall within one of the categories enumerated in RSA 86:6, II are taxable.

Under RSA 86:57, administrators, executors, trustees, grantees and certain donees "shall be liable for [legacy and succession] taxes, with interest, until the same have been paid." A related statutory provision, RSA 86:60, mandates that these same persons, when holding property subject to the tax, "shall deduct the tax therefrom, or collect it from the legatee or person entitled to said property . . .", and that they shall not deliver the taxable property until having collected the tax. It is clear from the wording of these provisions that they are intended to apply to all persons in control of property subject to the legacy and succession tax, including those who hold the property for the benefit of another. Thus, a trustee or employer sponsor who has control of a decedent's interest in a pension plan is potentially personally liable under RSA 86 for the legacy and succession tax due on the decedent's estate.

At the same time, pursuant to RSA 86:73, no safe deposit company, trust company, corporation, bank or other institution or person possessing or controlling securities, deposits, assets or property belonging, in whole or in part, to a decedent shall deliver or transfer that property to another person without the written consent of the Department. A trustee or employer sponsor having control over a decedent's interest in a pension plan is therefore subject to RSA 86:73's statutory restrictions on asset distribution. The restriction on transfers is not absolute, however. The statute contains exceptions for transfers made to a duly appointed executor or administrator of the estate, and transfers that are wholly made to persons exempt under RSA 86:6, II from the legacy and succession tax.

To determine the ultimate liability of a trustee or employer sponsor of a pension plan containing assets that fall within the purview of RSA 86:73, it is necessary to read RSA 86:57, 60 and 73 in conjunction. When interpreting multiple statutes that deal with a similar subject matter, the statutes are construed ". . . so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute." Petition of Public Serv. Co. of N.H., 130 N.H. 265, 282 (1988)(citation omitted). It is clear that it would not be reasonable to hold a trustee controlling RSA 86:73 assets personally liable for legacy and succession taxes if the trustee distributed those assets after receiving consent from the Department. At the same time, the notification required under RSA 86:74, and the prior consent required pursuant to RSA 86:73, are necessary for the Department to effectively administer the legacy and succession tax.

RSA 87, the estate tax, operates similarly to RSA 86. Pursuant to RSA 87:4, a trustee or employer sponsor of a pension plan is personally liable for any outstanding estate taxes. The Petitioner is correct that RSA 87 contains no consent provision similar to RSA 86:73.

However, it would be reasonable to apply any consent given for the purposes of the legacy and succession tax to any potential tax liability of the estate. Therefore, a trustee or employer sponsor of a pension plan who obtains the Department's consent pursuant to RSA 86:73 would have no personal liability under RSA 87 for any subsequent distribution of assets.

Ruling

Based on the statutory provisions discussed above, a pension plan trustee or employer sponsor is not personally liable for tax under RSA 86 if:

(1) the trustee or sponsor distributes the plan proceeds to the administrator or executor of a decedent's estate;

(2) the entire pension plan proceeds are to be distributed to a person exempt from taxation under RSA 86:6; or

(3) the trustee or sponsor obtains the written consent of the Department prior to distributing the decedent's plan proceeds.

A pension plan trustee or employer sponsor is not personally liable for tax under RSA 87 if the trustee or sponsor obtains the written consent of the Department prior to distributing the decedent's plan proceeds.

A pension plan trustee who distributes a decedent's share of plan proceeds to a person taxable under RSA 86:6 without the written consent of the Department is personally liable for any outstanding tax due under either RSA 86 or RSA 87.

Stanley R. Arnold, Commissioner