



## Illinois Department of Revenue

101 W. Jefferson St.  
Springfield, IL 62702

September 22, 2014

William Stalter  
Stalter Legal Services, LLC  
5350 W. 94<sup>th</sup> Terrace, Suite 202  
Prairie Village, Kansas 66207

Re: Preneed Funeral Trust Income

Dear Mr. Stalter:

This is in response to your letter dated June 23, 2014 in which you request a legal tax ruling regarding the treatment of certain foreign disregarded entities. The Department's regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 100.1200(b) and (c). The nature of your letter and the information provided require that we respond with a General Information Letter.

Your letter states as follows:

I represent the Preneed Resource Company, which has been engaged to provide tax administration to preneed funeral trusts established pursuant to the Illinois Funeral or Burial Funds Act (225 ILCS 45). Each of these preneed funeral trusts is also a "Qualified Funeral Trust" or "QFT" pursuant to Internal Revenue Code Section 685.

In the "2000 Practitioners' Questions and Answers", your Department advised that "income from a trust established under the Illinois Funeral or Burial Funds Act will be subject to Illinois income tax only to the extent included in federal taxable income or adjusted gross income of a taxpayer in the year a payment is made from the relevant individual account." The Q&A also advised that 86 Ill. Adm. Code Section 100.2470 would be amended to reflect 'this rule'. Subsequently, Section 100.2470 was amended to address preneed cemetery trusts established pursuant to the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390), but no reference was made to preneed funeral trusts. The amendment made for preneed cemetery trusts differs from the 2000 Q&A rule in that all income earned by such trusts is exempt from Illinois income taxation. The Internal Revenue Service took a position several years ago (Notice 98-6) that all preneed trusts are taxed the same way regardless of whether they are for funeral contracts or cemetery contracts. We would also note that both the Illinois Funeral or Burial Funds Act and

the Illinois Pre-Need Cemetery Sales Act require the trust to accrue income. Consequently, I assume your Department applies Section 100.2470 consistently to both types of preneed trusts.

A predecessor administrator was unaware of either the 2000 Practitioners' Questions and Answers or Section 100.2470. Trust returns were prepared treating all income earned by the individual accounts as taxable. It is our intent to amend those returns and request refunds.

### **RESPONSE**

Section 203(c)(2)(K) Illinois Income Tax Act ("IITA") provides for a modification of a trust's base income for an amount equal to amounts added to base income that would otherwise be taxable income, but are exempt from taxation by this State by reason of its statutes or Constitution.

Department of Revenue Regulations Section 100.2470(g) provide that income of trusts created pursuant to the Illinois Pre-Need Cemetery Sales Act is held in suspense until the final determination as to whom will receive the trust account funds.

g) Other income exempt from Illinois income taxation by reason of Illinois statute:

- 1) Income earned by certain trust accounts established under the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390/16]. Section 16(f) of the Illinois Pre-Need Cemetery Sales Act provides that: *because it is not known at the time of deposit or at the time that income is earned on the trust account to whom the principal and the accumulated earnings will be distributed, for purposes of determining the Illinois Income Tax due on these trust funds, the principal and any accrued earnings or losses relating to each individual account shall be held in suspense until the final determination is made as to whom the account shall be paid.*

The Illinois Funeral or Burial Fund Act (225 ILCS 45/1 et seq.) contains the same language with respect to income on trust accounts as does the Illinois Pre-Need Cemetery Sales Act. Section 4a(c) of the Illinois Funeral or Burial Funds Act provides:

#### **Sec. 4a. Investment of funds.**

- c) Because it is not known at the time of deposit or at the time that income is earned on the trust account to whom the principal and the accumulated earnings will be distributed for the purpose of determining the Illinois income tax due on these trust funds, the principal and any accrued earnings or losses related to each individual account shall be held in suspense until the final determination is made as to whom the account shall be paid.

Income on trust accounts under the Illinois Funeral or Burial Fund Act is treated the same as income on trust accounts under the Illinois Pre-Need Cemetery Act. Please note that the income from a pre-paid funeral trust created under the Illinois Funeral or Burial Fund Act is not exempt from Illinois Income taxation. Rather, pursuant to Section 4a(c) of the Act, taxation of the income earned on the account is held in suspense until the final determination is made as to whom the account shall be paid.

This is also true of income earned by trust accounts established under the Illinois Pre-Need Cemetery Sales Act.

Section 911 of the IITA provides:

**Sec. 911. Limitations on Claims for Refund.**

(a) In general. Except as otherwise provided in this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is the later; and

(2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have any further questions, you may contact me at (217) 524-7580.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Crain', with a stylized flourish at the end.

Matthew Crain  
Associate Counsel (Income Tax)