SUMMARY

QUESTION: Will the corporation's ownership interest in the trust create a tax liability for intangible tax purposes?

ANSWER - Based on Facts Below: No. The ownership interest in the trust will not create a tax liability because it is residual and subordinate in nature to the other certificate holders.

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See Revised 01C2-002R dated Oct. 16, 2001

Aug 01, 2001

Re: Technical Assistance Advisement No. 01C2-002
Intangible Tax - Taxable Situs
XXX (hereinafter Company)
XXX (hereinafter "Trust B")
XXX (hereinafter "Trust A")

Dear:

Your letter requesting a Technical Assistance Advisement has been referred to this office for response. The specific scenario for which advice has been requested is summarized below.

Facts as Presented by Petitioner

Trust B was formed pursuant to a Trust and Servicing Agreement ("B Agreement") and an Indenture Agreement ("Indenture"). The purpose of Trust B is as follows:

* to purchase automobile retail installment contracts or loans (hereinafter "receivable");
* to issue notes and a certificate of ownership in the trust; and
* to make payments and distributions on said notes and the

certificate.

In order to operate Trust B, an owner trustee, and indenture trustee, and a servicer of the receivables were appointed. Although the Company appointed the original owner trustee, indenture trustee, and services, it does not have the power to appoint any of their successors.

As outlined in B Agreement, the Company sold and transferred its interest in certain of its automobile receivables to Trust B. In exchange, the Company received cash and a certificate of ownership in Trust B. Under the terms of the Indenture, a spread account was established for the benefit of the note holders and the insurer. Pursuant to B Agreement, the spread account will hold the excess, if any, of the collections on the receivables over the amount which Trust B is required to pay. The Indenture provides that the certificate of ownership entitles the Company to receive all funds held in the spread account in excess of the required spread amount on each payment date after payment of all amount as provided in Agreement B. Since payment to the Company is contingent upon an excess balance being held in the spread account, it is believed the Company does not have a current right to income and therefore has no taxable beneficial interest in Trust B. B Agreement provides that the Trust may be called only if the principal balance on the notes held in the Trust is 10 percent or less of the initial not balances. The certificate holder, which is the Company, must notify the owner trustee in writing if it plans to exercise the option to purchase the notes. It is the owner trustee who is authorized to conduct the business and affairs of Trust B.

The Company does not possess an unqualified power or unlimited power to revoke or invade the corpus of Trust B. Its ability to transfer, assign, exchange or otherwise pledge its right in the assets of Trust B is significantly limited. Additionally, there is not a readily available market for such an interest, but Generally Accepted Accounting Principles ("GAAP") require that the Company's financial statements disclose the retained interest as an asset with an assigned value. The Company determines the estimated fair market value of its retained interest by discounting the expected cash flows. The expected cash flows represent the net present value of the excess cash flows of the trust, less cost incurred to service the portfolio and losses estimated to be incurred on the receivables.

Trust A was formed pursuant to a Pooling and Servicing Agreement dated February 1, 1999 (the "A Agreement"). The property of Trust A includes a pool of simple and precomputed interest installment loan and security agreements and installment sales contracts for new and used automobiles, light truck, etc. The Company sold and transferred its interest in certain of its automobile receivables to Trust A. In exchange, the Company received cash and a certificate of ownership in Trust A.

Like Trust B, a trustee and servicer were appointed to operate Trust A. Similarly, and insurer was chosen in the event that there were insufficient funds to make all required payments.

A Agreement provides for the establishment of a spread account. The interests of the Company are subordinate to the interests of the other certificate holders. The Company receives the excess, if any, in the spread account after the required distributions have been made by the servicer on each payment date. The amounts distributed in the Class IC Certificate holder, (currently the Company) are released from Trust A and from any security interest of the trustee or the insurer.

The Company may also call Trust A, but as with Trust B, certain conditions must be met before the Company can call Trust. A. In order to call the trust, the notional principal amount will have been reduced to zero (per Section 16.2) and the pool balance is equal to or less than 10 percent of the initial certificate balance. Since these conditions apply, you assert that the Company does not have an unqualified right to revoke Trust A.

Request for Advisement

You request a ruling to the effect that the Company has no intangible tax liability arising out of the subject securitizations of automobile receivable.

Provisions of Law

According to s. 199.052(1), F.S., annual tax returns are to filed by every corporation authorized to do business in this state and by any person who on January 1 owns, manages or controls intangible personal property that has a taxable situs in this state.

Section 199-023(1), F.S., defines intangible personal property as all personal property which is not in itself intrinsically value, but which derives its chief from that which it represents. Section 199.023 (1)(a), F.S., specifically includes, shares of business trusts in the definition of intangible personal property. Section 199.032, F.S., imposes annual tax on each dollar of the just valuation of all intangible personal property that has a taxable situs in this state.

Section 199.175(1), F.S., provides:

> Intangible personal property shall have a taxable situs in this state when it is owned, managed, or controlled by any person domiciled in this state on January 1 of the tax year. Such intangibles shall be subject to annual taxation under this chapter, unless the person who owns, manages, or controls them is specifically exempt or unless the property is specifically exempt. This provision shall apply regardless of where the evidence of the intangible property is kept; where the intangible is created, approved, or paid; or where business may be conducted from which the intangible arises.

For purposes of the intangible tax "any person domiciled in this state" includes any business trust. (See s. 199.023(3), F.S.)

Position of the Department

Based on the information provided. the Company possesses an ownership interest in the trust. The ownership interest allows the Company to receive the excess, if any, in the spread account only after the required distributions have been made by the servicer or each payment date. However, the ownership interest is a residual interest and subordinate in nature to the other Certificate holders. The Company does possess a taxable ownership interest in Trust A and Trust B, but its liability for intangible tax in relation to these trusts is limited by reference to the just valuation of those ownership interest.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, you request and related backup documents are public records under Chapter 119 F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Celestine Grantham
Senior Tax Specialist
Technical Assistance and Dispute Resolution

Office of General Counsel

CG/mh