

ATTACHMENT TO
PETITION FOR ADVISORY OPINION

State of New York – Department of Taxation and Finance - Form AD-1.8

4. The petitioner submits the following statement of facts as the basis for the requested advisory opinion:

Facts as the basis for the Advisory Opinion

Petitioner (the "Settlor") created an irrevocable trust (the "Trust") pursuant to a trust agreement (the "Trust Agreement") between the Trustees and the Settlor. The Settlor is deemed to own the Trust property for Federal and New York State income tax purposes, as provided in Sections 671 to 679 of the Internal Revenue Code. Under the terms of the Trust Agreement, the Settlor has the right to ^{administer} ~~acquire~~ or reacquire trust property at any time (the "Substitution Power"). The provision of the Trust Agreement creating the Substitution Power reads as follows:

^{Settlor} "Reacquisition of Trust Assets. The Settlor at any time or from time to time may acquire or reacquire any portion of the Trust Fund of any Trust by substituting therefor other property of an equivalent value, valued on the date of substitution. Notwithstanding any other provision of this Trust Agreement, the Settlor may exercise this power without the consent of the Trustees. Although this power is exercisable by the Settlor in a non-fiduciary capacity without the consent of any of the Trustees, the Trustees, if the Trustees believe that the property the Settlor seeks to substitute for trust property is not in fact property of equivalent value, shall seek a determination by a court of competent jurisdiction to assure that the equivalent value requirement of this provision is satisfied. The Settlor, at any time, may release this power with respect to any Trust. Any release under this section shall be irrevocable and shall be made by instrument in writing signed by the Settlor and delivered to each Trustee of the Trust with respect to which the release applies."

<sup>of
equivalent
value</sup> The Settlor wishes to exercise the Substitution Power by substituting ^{Substitution} personal property he owns (the "Substituted Property") for ~~more~~ than tangible personal property (the "Trust Property") having value equal to the Substituted Property (the "Exchange"). Upon the initial substitution of Substituted Property by the Settlor, the Settlor paid New York State sales tax with respect to the Substituted Property. Following the Exchange, the Trustees may allow Trust beneficiaries to use the Substituted Property without charge or other consideration.

Applicable Law and Regulations

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Attachment
to Advisory
Opinion

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