

## NOTICE OF MEETING AND REPORT

TO: TRUST AND ESTATE LAW SECTION  
ORANGE BOOK FORMS COMMITTEE

FROM: Connie Tromble Eyster, Secretary

DATE: April 21, 2005

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### NEXT MEETING

The next meeting of the Orange Book Forms Committee will be held on **THURSDAY, May 19, 2005** from 9:00 a.m. to approximately 10:30 a.m. at the Colorado Bar Association Continuing Legal Education offices in the small classroom on the Third Floor, 1900 Grant Street, Denver, Colorado.

If you would like to be present at the meeting via telephone, please call Terri Jones ((303) 824-5366 at CLE. She will provide you the phone number and passcode for calling in, and can fax you copies of handouts that will be distributed at the meeting.

### AGENDA FOR MARCH 17, 2005 MEETING

- I. Welcome and Call to Order
  - Introductions
  - Attendance sheet
  - Approve minutes of April 2005 meeting
- II. Current Projects
- III. Other Subcommittee reports
- IV. New Matters & Announcements
- V. Adjourn

### **MINUTES OF MEETING HELD ON APRIL 21, 2005**

1. Call to Order. Chairperson Dennis Whitmer called the meeting to order. The minutes from the last meeting were approved.
2. ESBT Election. Merry Balson and Darla Daniel reviewed changes made to the Notes on Use for the QSST form (appears in Tab B, special provisions). The regulations have changed since the Notes on Use was last drafted, which accounts for most of the changes to the Notes on Use. Merry added a lot of the definitions and requirements,

time that you have to file an election, etc . . . Much of the changes are not so much focused on the drop-in will language as it is on making the election. Merry also drafted an ESBT election form.

The committee discussed whether we need to have the date that the new regulations were finalized in the Notes on Use. Committee members were concerned that it might create an obligation for us to update all of our Notes on Use as regulations are completed. The committee decided to include language in Note on Use 18 such as “as of the time that these Notes on Use were drafted, these regulations have not been amended to reflect this statutory change.”

The committee also decided to put Merry’s cautionary language near the beginning of the Notes on Use. Practitioners should be aware that this is a problem area and is not necessarily a solution for everything. Dennis thinks the caution should go in a grey box right over section 4, i.e., right over this form language.

The committee decided to change “shall” to “may” in the first line of the form – without a corresponding Note on Use - because not all beneficiaries will want to continue the S election. The committee also added “or trust” in the first line of the second paragraph of paragraph (c) of the form.

The ESBT election form was drafted to follow the form we have for the QSST election.

Section (E) was changed on both forms. That section used to list all requirements entitling a beneficiary to make the election, but was believed to be duplicative of the verification section in which the beneficiary certifies that the trust meets the definitional requirements of IRC section 1361(d)(3). Some committee members were concerned that a practitioner would use this form without checking to make sure that the requirements have not changed since the form last revised. Darla and Merry will make that change.

The committee decided to take out the IRS address because the election needs to be filed at the location where the corporation files its return – which would not be standard for everyone.

The committee approved the form with the changes agreed upon.

3. Joint Trust. Carl pulled a note on use from the back up to the front of the document (to be put in a grey box).

The committee decided to change “always” in the second line from the bottom of first paragraph to “only.” Also, the committee discussed whether “pot trust for children” should be “pot trust for *minor* children.”

In the second paragraph of the form, the second sentence was revised to read “The surviving settlor will have the power to revoke or amend the trust in whole or in part after the first settlor’s death.” The rest of the paragraph, other than the last sentence, is deleted.

Further discussion was had regarding whether we should create a joint, tax-planning, trust. The committee started with a non-tax planning trust and we may do a tax-planning form after this one is approved.

The committee discussed reasons for doing a joint trust, part of which is to save the client from doing two trusts and also to provide comfort to some clients who view doing two trusts as similar to “divorcing.” The committee recognizes that joint trusts are controversial and that some practitioners do not like them – so maybe it would be a good idea to include a discussion in the notes on use regarding why joint trusts can be useful. Changes to our powers of attorney may be appropriate when we are talking about revocable trusts in general. A separate committee may be formed to deal with this project.

Dennis suggested that Orange Book could require a road-map to discuss how these forms, generally, are used together. Randy mentioned that when he was in Virginia, there was a practice guide that went with the forms that walked you through an entire estate planning engagement. He thinks it would be very helpful and could show us the Virginia books to use as an example.

Introductions to the forms – may be a very good start and a project for next year.

#### 4. Adjourn.