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October 31, 1973

FILE NO. S-649

TAXATION:

Personal Property -
Uniform Gifts to Minors

Honorable Max B. Stewart
State's Attorney
Hancock County Courthouse
Carthage, Illinois 62321

Dear Mr. Stewart:

I have your letter of recent date wherein you
state:

"I have had an inquiry with regard to the
assessment of personal property held under
the uniform gift to minors act.

* * * * *

The question has arisen as to whether or not
a custodian of personal property under the
uniform give to minors act would be considered
a fiduciary and this personal property subject
to taxation.

* * * * *

In Lake Shore Auto Parts Co. v. Korzen, 49 Ill.

2d 137, 148, our Supreme Court stated:

"We conclude that the meaning of article IX-A is that ad valorem taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited."

In its supplemental opinion to Lake Shore Auto Parts Co. v. Korzen, 54 Ill. 2d 237, the court stated at p. 239:

"The personal property thus left subject to taxation under article IX-A includes the following categories of ownership: Partnerships, limited partnerships, joint ventures, professional associations, and professional service corporations. Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by article IX-A. * * *"

In order to answer your question, the following phrase from the aforementioned statement must be considered in regard to the Uniform Gifts to Minors Act (Ill. Rev. Stat. 1971, ch. 3, par. 531, et seq.):

"Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by article IX-A."

It appears from this phrase that the basis for the non-exempt status is that the trustee or fiduciary own the property, and that such ownership is not ownership by a

natural person. It is apparent the court was addressing itself to situations where legal title to the property is vested in the trustee or fiduciary.

The Uniform Gifts to Minors Act, supra, provides a simplified method for making gifts to minors without the use of a trust or legal guardianship. The theory of the Act is that a person who transfers any of the types of property embraced in the Act to a child under age 21 in a manner prescribed by the Act makes an indefeasibly vested gift to the minor. 5 James, Ill. Prob. Law 1972 P.P., sec. 370.

Section 3(a) of the Uniform Gifts to Minors Act, (Ill. Rev. Stat. 1971, ch. 3, par. 533) reads:

" * * * A gift made in a manner prescribed in this Act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money, life or endowment insurance policies or annuity contracts given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this Act."

The Act provides that money as well as securities and insurance policies may be the subject of a gift to a minor (Ill. Rev. Stat. 1971, ch. 3, par. 531(e)), and that a bank, trust company, or any adult may act as custodian of the gift. (Ill. Rev. Stat. 1971, ch. 3, par. 532.) When

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the gift is made it is subject to the prescribed administrative powers, rights, duties and immunities of the custodian named by the donor. Uniform Gifts to Minors Act, Commissioners Prefatory Note, 9B U.L.A. 250.

The powers and duties of the custodian are contained in section 4 of the Uniform Gifts to Minors Act (Ill. Rev. Stat. 1971, ch. 3, par. 534.) Although the powers and duties of the custodian are similar to those of a trustee, a custodian is not a trustee for he is without title, title being vested in the minor. 5 James, Ill. Prob. Law 1972 P.P., sec. 370.2.

A custodian is a fiduciary within the meaning of the Act. Section 4e of the Uniform Gifts to Minors Act, (Ill. Rev. Stat. 1971, ch. 3, par. 534) reads:

"The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this Act or hold money so given in an account in the financial institution to which it was paid or delivered by the donor."

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Although a fiduciary, the custodian does not hold legal title to the custodial property as such is vested in the minor.

A gift made, in the manner prescribed by the Act, qualifies for the \$3000 to \$6000 gift tax exclusion provided for in Internal Revenue Code sec. 2503 and 2513, as the gift vests indefeasibly in the minor. Uniform Gifts to Minors Act, Commissioners Prefatory Note, 9B U.L.A. 250.

The income from the custodial property is taxable to the minor, except to the extent it is used for the support of the minor, and is therefore, includable in the gross income of any person who is legally obligated to support the minor. Since the custodian is not the holder of legal title, the tax on accumulated income and capital gains is reportable by and taxed to the minor the same as distributable income. 5 James, Ill. Prob. Law 1972 P.P., sec. 372.1.

Therefore, it is my opinion that since title to property which is the subject matter of a gift to a minor, (pursuant to the Uniform Gifts to Minors Act, supra), is indefeasibly vested in the minor, the property is owned by

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a natural person and accordingly exempt from personal property
taxation.

Very truly yours,

A T T O R N E Y G E N E R A L