

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4 - PLR-142721-01
Date: August 21, 2001

Re:

Legend:

Husband	=
Wife	=
B	=
C	=
D	=
State	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Trust 1	=
Trust 2	=

Dear _____ :

This is in response to your authorized representative's correspondence dated August 3, 2001, and prior correspondence, requesting a ruling concerning the estate tax consequences under section 2042 of the Internal Revenue Code of certain language contained in an irrevocable life insurance trust (Trust 2).

The facts and representations submitted are summarized as follows: On Date 1, Husband and Wife, residents of State, created a revocable trust, Trust 1, and transferred to it substantially all of their separate and community property. Husband and Wife were the original trustees. B and D, daughters of Husband and Wife, and C, granddaughter of Husband and Wife, were named as successor trustees. Trust 1 provides that on the death of the first spouse to die, the trust estate is to be divided into two parts: the Survivor's Share (Trust A), which is to be funded with the surviving spouse's separate property and one-half interest in the community property, and the Decedent's Share, which will be funded with the Decedent's separate property and one-half interest in the community property. Trust A will remain revocable until the death of the surviving spouse. The Decedent's Share is to be further divided into two parts: Trust B, which is intended to be a credit shelter trust, and Trust C, which is intended to be a qualified terminable interest property (QTIP) trust.

Trust 1 provides that “on the death of the Surviving Settlor, the Successor Trustee shall charge Trust A and Trust C proportionately with the costs of final illness, funeral expenses, and any Federal and State taxes of the Surviving Settlor.” After the debts and obligations of Trust 1 have been paid, the trustee is to allocate the assets of Trust 1 among Husband’s and Wife’s children and grandchildren in specified proportions.

On Date 2, Husband and Wife created Trust 2, an irrevocable life insurance trust, and vested the trustee, D, with all rights, title and interest in and to any policies of insurance that were transferred to Trust 2. A life insurance policy on the joint lives of Husband and Wife was transferred to Trust 2. The proceeds of the life insurance policy are to be paid to Trust 2 upon the second to die of Husband and Wife. At that time, after the debts and obligations of Trust 2 have been satisfied, the trustee is to distribute the proceeds, outright and free of trust, to Husband’s and Wife’s children and grandchildren in specified proportions. If a named beneficiary is not then living and shall leave issue then living, then such designated share is to be allocated to such issue and distributed outright, and free of trust.

Paragraph 5.019 of Trust 2 provides that the trustee is not required to pay any amounts to the estate of either or both of Husband and/or Wife in satisfaction of Husband and/or Wife’s debts or liabilities of any kind. Additionally, the trustee of Trust 2 may, in its sole discretion, pay the estate tax, inheritance tax, or any other tax or expense due by reason of Husband and/or Wife’s death, but shall be under no compulsion to do so.

Husband died on Date 3. Wife died on Date 4. Upon the death of Wife, the life insurance proceeds from the life insurance policy on the joint lives of Husband and Wife became payable to Trust 2.

A ruling is requested that the existence of the language contained in Trust 2, which gives the trustee of Trust 2 the discretion to use the proceeds of the life insurance to pay the federal estate tax of Wife’s estate (but does not require the trustee to do so) will not cause inclusion of such proceeds in the gross estate of Wife under § 2042.

Section 2001 imposes a tax on the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2042(1) provides that the value of the gross estate shall include the value of all property to the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

Section 2042(2) provides that the gross estate includes the proceeds of any life insurance policies insuring the decedent’s life with respect to which the decedent possessed incidents of ownership at the time of his death.

Section 20.2042-1(b) sets forth the meaning of the term “receivable by the executor” under section 2042(1): Section 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent’s life receivable by the executor or administrator, or payable to the decedent’s estate. It makes no difference whether or

not the estate is specifically named as the beneficiary under the terms of the policy. Thus, if under the terms of an insurance policy the proceeds are receivable by another beneficiary but are subject to an obligation, legally binding upon the other beneficiary, to pay taxes, debts, or other charges enforceable against the estate, then the amount of such proceeds required for the payment in full (to the extent of the beneficiary's obligation) of such taxes, debts, or other charges is includible in the gross estate.

In the present case, State law does not require or direct the trustee to use the life insurance proceeds held by Trust 2 to pay the estate's obligations, including the Wife's federal estate tax.

Upon the death of the survivor of Husband and Wife, the proceeds of the joint life insurance policy on the joint lives Husband and Wife held by Trust 2 became payable to the trust. Under the terms of the trust, the Trustee is not required or obligated to pay any amounts to either Husband's and/or Wife's estate in satisfaction of their debts or liabilities of any kind. The Trustee may, however, in his/her sole discretion, pay the estate tax, inheritance tax, or any other tax or expense due by reason of the death of the second spouse to die, but shall be under no compulsion to do. Accordingly, the life insurance proceeds receivable by the trustee are not subject to an obligation, legally binding upon the trustee, to pay taxes, debts, or other charges enforceable against the Wife's estate within the meaning of § 20.2042-1(b).

Based on the facts submitted and the representations made, we conclude that the proceeds of the life insurance policy on the joint lives of Husband and Wife that are payable to Trust 2 and subject only to discretionary use by the trustee to pay estate taxes, or other expenses of the estate, are not includible in Wife's estate under section 2042.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,
Lorraine E. Gardner
Acting Senior Technician Reviewer
Branch 4
(Passthroughs and Special Industries)

Enclosure:
Copy for section 6100 purposes

CC: