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Washington, DC 20224

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Date: NOVEMBER 15, 2005

Private Letter Ruling request

Legend

Taxpayer -  
Club -  
  
State X -

Dear :

This is in response to your representative's letter, dated June 29, 2005, in which you request a ruling concerning the treatment for gift tax purposes of a transfer to Club.

You represent that Taxpayer is a member of Club. Club is organized under the laws of State X as a nonprofit mutual benefit corporation. It is represented that Club qualifies for tax exemption under § 501(c)(7) of the Internal Revenue Code. Club operates a clubhouse, restaurant, fitness center, tennis courts, swimming pools, and a golf course on property owned by the Club for the exclusive use of its members. All the income received by Club is used in maintaining and improving its facilities and providing current services to its members. It does not maintain reserves for future use. Article XVII, Section 3 of the Club bylaws provides, in part, that gifts of cash and liquidated gifts of assets may be used by the Club only for capital improvements, replacement of capital items, or the repayment of debt incurred for capital projects. Gifts may not be used for Club operations. Club has recently incurred indebtedness to fund capital improvements, such as a new club house, locker rooms, dining facilities, and a fitness center. Club is also planning additional capital improvement projects, such as an irrigation system for the golf course.

Taxpayer proposes to make gifts to Club for the purpose of retiring the debt recently incurred for capital expenditures and funding new capital improvements.

Taxpayer requests a ruling that the gifts by Taxpayer and Taxpayer's spouse to Club will be treated as gifts under § 2511 in the form of a present interest to the other members of Club for which Taxpayer and Taxpayer's spouse will be entitled to a gift tax annual exclusion under § 2503(b) with respect to the gift to each Regular member.

Section 501(a) of the Internal Revenue Code provides that an organization described in §§ 501(a) or 501(d) shall be exempt from income tax unless the exemption is denied under §§ 502 or 503.

Section 501(c)(7) describes clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 2512(b) provides that, where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration is deemed a gift.

Under § 2503(b)(1), the first \$10,000 (adjusted annually for inflation as provided in § 2503(b)(2)) of gifts made to any person by the donor (other than gifts of future interests in property) shall not be included in the total amount of gifts made during the year.

Section 25.2503-3(a) of the Gift Tax Regulations provides that no part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interest" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time.

Section 25.2503-3(b) provides that an unrestricted right to the immediate use, possession, or enjoyment of property or the income from property (such as a life estate or term certain) is a present interest in property.

Section 25.2511-1(c)(1) provides that the gift tax applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 25.2511-1(h)(1) provides that a transfer of property by a donor to a corporation generally represents a gift by the donor to the other individual shareholders of the corporation to the extent of those shareholders' proportionate interests in the corporation. The regulation further provides that there may be an exception to this rule, such as a transfer made by an individual to a charitable, public, political or similar organization which may constitute a gift to the organization as a single entity, depending upon the facts and circumstances in the particular case.

In this case, Club qualifies as an organization eligible for tax exempt status under § 501(c)(7). Club is a nonprofit organization and none of the earnings of Club inure to the benefit of any individual. In view of the nature and operation of Club, including the fact that Club is operated solely for non-profitable purposes (the recreation, enjoyment, education, and entertainment of its members) and not for the economic benefit of its members, we conclude that Club comes within the exception to the general rule of § 25.2511-1(h)(1), "for charitable, public, political or similar organizations." Accordingly, we conclude that Taxpayer's transfer to Club will be a gift to Club as a single entity.

Further, since Club, the donee of the gift, will receive the immediate and unrestricted use of Taxpayer's gift, the gift will constitute a gift that is not limited to commence in use, possession or enjoyment at a future date or time and will thus be a gift of a present interest. Accordingly, to the extent that Taxpayer's gift to Club does not exceed the annual exclusion amount for the calendar year as described in § 2503(b), Taxpayer's gift will be excludible for gift tax purposes under § 2503(b). Compare Rev. Rul. 71-443, 1971-2 C.B. 337, which concludes that a gift to the corporation in that ruling was a gift of a future interest in property to the shareholders of the corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as we have specifically ruled herein, we express no opinion under the cited provisions or under any other provision of the Code.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

George Masnik  
Chief, Branch 4  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: