

Internal Revenue Service

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Person To Contact:
 , ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-122230-07
Date: September 05, 2007

LEGEND:

Grantor =
Property =

Date 1 =
a =
b =
c =
d =

Dear :

This is in response to your April 30, 2007 letter and other correspondence requesting a ruling that the leasing of the Caretaker House will not cause Property to fail to qualify as a personal residence under § 25.2702-5(c)(2) of the Gift Tax Regulations.

The facts submitted are as follows:

Until Date 1, Grantor owned Property. Property is approximately a acres in size and includes seven buildings: a main house with approximately b square feet of living space, two free standing garages, a maintenance building, two greenhouse buildings, and a Caretaker House with approximately c square feet of living space. It is represented that Property is assessed as one parcel for local property tax purposes and is similar in size and configuration to other nearby properties. Property is subject to a conservation restriction that restricts future use and development of Property to preserve its natural, open and scenic condition and maintain its character.

Grantor uses the main house as a personal residence. In the past, Grantor has allowed friends and relatives to occupy the Caretaker House for limited periods at no cost. On several occasions, the Caretaker House was rented to third parties pursuant to lease agreements. At present, the Caretaker House is unoccupied.

On Date 1, Grantor deeded her interest in Property to a nominee trust. The beneficiaries of the nominee trust are three trusts. The only assets held by the three trusts are fractional interests in the nominee trust. Each of the three trusts is intended to qualify as a Qualified Personal Residence Trust (QPRT) as described in § 25.2702-5(c).

Grantor intends to rent the Caretaker House to an unrelated third party for approximately \$d. Grantor will provide no services in connection with the rental of the Caretaker House other than ordinary maintenance. During the term of the trusts, Grantor would remain entitled to the exclusive occupancy of Property subject to the rights of the lessee with respect to the Caretaker House.

LAW AND ANALYSIS

Section 2702(a)(1) of the Internal Revenue Code provides that solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in § 2701(e)(2)) shall be determined as provided in § 2702(a)(2).

Section 2702(a)(2) provides that the value of any retained interest that is not a qualified interest is treated as being zero. The value of any retained interest that is a qualified interest is determined under § 7520.

Section 2702(a)(3)(A)(ii) provides that § 2702(a) shall not apply to any transfer if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

Section 25.2702-5(a)(1) provides, in part, that § 2702 does not apply to a transfer in trust meeting the requirements of that section. A transfer in trust meets the requirements of the section only if the trust is a personal residence trust as defined in § 25.2702-5(b). A trust meeting the requirements of a "qualified personal residence trust" as defined in § 25.2702-5(c) is treated as a personal residence trust.

Section 25.2702-5(b)(1) provides, in part, that "[a] residence is held for use as a personal residence of the term holder so long as the residence is not occupied by any other person (other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence."

Section 25.2702-5(c)(1) provides that for purposes of § 2702(a)(3)(A)(ii), a qualified personal residence trust is a trust meeting all the requirements of the section. These requirements must be met by provisions in the governing instrument, and these governing instrument provisions must by their terms continue in effect during the existence of any term interest in the trust.

Section 25.2702-5(c)(2)(i) provides that a personal residence of a term holder is either the principal residence of the term holder (within the meaning of § 1034), one other residence of the term holder (within the meaning of § 280A(d)(1) but without regard to § 280A(d)(2)), or an undivided fractional interest in either.

Section 25.2702-5(c)(2)(ii) provides that a personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

Section 25.2702-5(c)(2)(iii) provides that a residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. The principal residence of the term holder will not fail to meet the requirements of the preceding sentence merely because a portion of the residence is used in an activity meeting the requirements of § 280A(c)(1) or (4) (relating to deductibility of expenses related to certain uses), provided that such use is secondary to use of the residence as a residence. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services are provided in connection with the provision of lodging (e.g., a hotel or a bed and breakfast). A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence.

Section 25.2702-5(d), Example 2 provides that L owns a vacation condominium that L rents out for six months of the year, but which is treated as L's residence under § 280A(d)(1) because L occupies it for at least 18 days per year. L provides no substantial services in connection with the rental of the condominium. L transfers the condominium to an irrevocable trust, the terms of which meet the requirements of a qualified personal residence trust. L retains the right to use the condominium during L's lifetime. The trust is a qualified personal residence trust.

Section 4.01(51) of Rev. Proc. 2006-3, 2006-1 I.R.B. 122, 129, provides that rulings will not ordinarily be issued on whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) to be a QPRT. Rev. Proc. 2003-42, 2003-1 C.B. 993, provides sample trust provisions for QPRTs. By following the sample trust provisions, taxpayers can be assured that the Service will recognize a trust as meeting all of the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) if the trust (1)

operates consistently with the terms of the trust instrument and (2) is a valid trust under local law.

In this case, Grantor is the exclusive occupant of the main house. Grantor intends to rent the Caretaker House to an unrelated third party. The primary use of Property is as a residence of Grantor. Furthermore, Grantor will provide no services in connection with the rental of the Caretaker House other than ordinary maintenance. Accordingly, based on the facts submitted and the representations made, we conclude that the leasing of the Caretaker House to an unrelated third party will not cause Property to fail to qualify as a personal residence under § 25.2702-5(c)(2).

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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

Sincerely,

Lorraine Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes