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Refer Reply To:
CC:PSI:B04
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Date:
December 23, 2008

Re:

LEGEND:

Husband =
Wife =
Property =

Trust =
Purchasing Trust =

State =
Date 1 =
Year 1 =
Year 2 =
X =

Dear _____ :

This is in response to a letter dated June 25, 2008 and subsequent correspondence, requesting rulings under §§ 2501 and 2702 regarding the proposed transfer of Property to Trust.

The facts submitted and representations made are as follows. Purchasing Trust, an irrevocable trust, was established on Date 1 by Husband and Wife, as grantors, for the benefit of Husband and Wife's issue. Currently, neither Husband nor Wife is acting as trustee of Purchasing Trust. Husband is older than Wife.

Husband and Wife currently own Property, which is located in State. Property consists of a total of X acres that is improved by a residence and detached garage. Construction of the residence and garage was commenced in Year 1 (after Date 1) and completed in Year 2. None of Property or any structure on Property is rented for commercial purposes.

Husband and Wife propose to execute Trust, which is intended to meet the requirements of a qualified personal residence trust (QPRT) as described in § 25.2702-5(c). Husband is to be the trustee of Trust. The proposed terms of Trust provide that the trustee is to hold Property for the exclusive, rent-free use by Husband and Wife during their joint lives and until the death of the survivor of Husband and Wife. Upon the death of the survivor of Husband and Wife, the trustees of Trust are to distribute the remaining assets of Trust to the trustee of Purchasing Trust, to be added to the principal of Purchasing Trust. During the joint lives of Husband and Wife and the life of the survivor, all expenses of Property are to be paid by Husband and Wife and Purchasing Trust in the same manner in which expenses are borne by the holders of legal life estates and remainder interests under the law of State. No person other than Husband and Wife will hold any term interest in Trust concurrently with either Husband or Wife.

After executing Trust, Husband and Wife will transfer Property to Trust and Purchasing Trust will transfer to Husband and Wife cash and marketable securities with an aggregate fair market value on the date of transfer equal to the value of the remainder interest each is transferring to Purchasing Trust, determined based upon the fair market value of Property on the date of transfer (as determined by an independent, expert appraiser) and the actuarial tables prescribed under of § 7520.

It is represented that Husband and Wife, consistent with the terms of Trust, intend to use Property for residential purposes during the term of Trust. In addition, it has been represented that there were sufficient liquid funds in Purchasing Trust to fully fund the purchase of the remainder interest in Trust on the date that the transaction that is the subject of this ruling request was first proposed to Husband and Wife. It has also been represented that Purchasing Trust was funded prior to the date this transaction was proposed pursuant to independent transactions that are not related to the transaction that is the subject of this ruling request. Finally, it has been represented that neither Husband nor Wife is suffering from any condition or illness such that there is at least a 50 percent probability that either Husband or Wife will die within one year. In addition, neither Husband nor Wife has ever transferred an interest in a residence in a transaction described in § 2702(a)(3)(A)(ii).

Husband and Wife are requesting the following rulings:

1. Property constitutes a "personal residence" for purposes of § 2702(a)(3)(A)(ii) and § 25.2702-5(c)(2).

2. Husband and Wife's sale of a remainder interest in Trust to Purchasing Trust qualifies for the QPRT exception to the special valuation rule of § 2702(a)(2), and therefore the remainder interest should be valued for federal transfer tax purposes in accordance with the general actuarial valuation rules under § 7520.

3. Husband and Wife's sale of a remainder interest in Trust to Purchasing Trust will constitute a sale for adequate and full consideration in money or money's worth and will not in any part constitute a gift for federal gift tax purposes provided Purchasing Trust pays for the remainder interest in Trust with cash or marketable securities having an aggregate fair market value equal to the value of the remainder interest determined in accordance with the general actuarial valuation rules under § 7520.

LAW AND ANALYSIS

Section 2501 imposes a tax on the transfer of property by gift by an individual.

Section 2511 provides that the tax imposed by § 2501 applies 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(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift.

Section 2702(a)(1) 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)(2) shall not apply to any 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) of the Gift Tax Regulations 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 section § 25.2702-5(b). A trust meeting the requirements of a qualified personal residence trust (QPRT) as defined in § 25.2702-5(c), is treated as a personal residence trust. A trust of which the term holder is the grantor that otherwise meets the requirements of a personal residence trust (or a QPRT) is not a personal residence trust (or a QPRT) if, at the time of transfer, the term holder of the trust already holds term interests in two trusts that are personal residence trusts (or QPRTs) of which the term holder was the grantor. For this purpose, trusts holding fractional interests in the same residence are treated as one trust.

Section 25.2702-5(c)(1) provides that a QPRT is a trust meeting all the requirements of § 25.2702-5(c). 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.

Under § 25.2702-5(c)(5)(i) and (ii), in general, a QPRT is a trust the governing instrument of which prohibits the trust from holding, for the entire term of the trust, any assets other than one residence to be used or held for use (within the meaning of § 25.2702-5(c)(7)(i)) as a personal residence of the term holder, and certain additional assets as described in § 25.2702-5(c)(5)(ii).

Section 25.2702-5(c)(2)(i) provides that, a personal residence of a term holder is either: (A) the principal residence of the term holder (within the meaning of § 1034); (B) one other residence of the term holder (within the meaning of § 280A(d)(1) but without regard to § 280A(d)(2)); or (C) 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). The fact that a residence is subject to a mortgage does not affect its status as a personal residence. The term personal residence does not include any personal property (e.g., household furnishings).

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 this requirement 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(c)(2)(iv) provides that if spouses hold interests in the same residence (including community property interests), the spouses may transfer their interests in the residence (or a fractional portion of their interests in the residence) to the same QPRT, provided that the governing instrument prohibits any person other than one of the spouses from holding a term interest in the trust concurrently with the other spouse.

Section 2702(c)(1) provides that for purposes of § 2702, the transfer of an interest in property with respect to which there is one or more term interests shall be treated as a transfer of an interest in trust.

Under § 2702(c)(2) and § 25.2702-4(c), for purposes of § 2702, if an individual acquires a term interest in property and in the same transaction (or a series of related transactions) one or more members of the individual's family acquire an interest in the same property, the individual acquiring the term interest in the property is treated as having acquired the entire property and then transferring to the family members the interests acquired by such persons in the transaction (or series of transactions). The transfer is treated as made in exchange for the consideration (if any) provided by the family members for the acquisition of their interests in the property.

Section 2702(c)(3)(B) provides that the term "term interest" means either a life interest in property, or an interest in property for a term of years.

Section 25.2702-4(d), Example 2, considers a situation where K owns rental real estate valued at \$100,000. K sells a remainder interest in the property to K's child, retaining the right to receive the income from the property for 20 years. The purchase price paid by K's child for the remainder interest is equal to the value of the interest determined under § 7520. K's retained interest is not a qualified interest and is therefore valued at zero. Therefore, K has made a gift in the amount of \$100,000 less the consideration received from K's child.

Section 2702(e) provides that the term "member of the family" has the meaning given such term by § 2704(c)(2). Section 2704(c)(2) defines "member of the family" to mean, with respect to an individual: (A) such individual's spouse; (B) any ancestor or lineal descendant of such individual or such individual's spouse; (C) any brother or sister of the individual; and (D) any spouse of any individual described in clauses (B) or (C).

Section 7520(a) provides that the value of an annuity, an interest for life or a term of years, and a remainder or reversionary interest is to be determined under tables prescribed by the Secretary of the Treasury using the interest rate as prescribed under § 7520(a)(2).

RULING 1

Based on the facts submitted and the representations made, the size of Property is

comparable to that of properties in proximity to Property used for residential purposes. Accordingly, for purposes of § 25.2702-5(b)(2)(ii), Property includes adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location). In addition, the residence located on Property satisfies the primary use requirements of § 25.2702-5(b)(2)(iii). Accordingly, we conclude that Property constitutes a "personal residence" within the meaning of § 2702(a)(3)(A)(ii) and § 25.2702-5(b)(2).

RULINGS 2 AND 3

In the instant case, Husband and Wife will transfer their respective interests in Property to Trust, and in a related transaction Husband and Wife will transfer a remainder interest in Property (under the terms of Trust) to Purchasing Trust in exchange for Purchasing Trust's payment to Husband and Wife of cash and securities equal in value to the actuarial value of the remainder interest each is transferring to Purchasing Trust as determined under § 7520. The transaction comes within the purview of § 2702(c)(2) and § 25.2702-4(c) and is similar to the transaction described in § 25.2702-4(d), Example 2, except that Example 2 does not involve a transfer to a QPRT. Therefore, the transaction is treated as a transfer by Husband and Wife of their respective remainder interests in Property coupled with the retention by each (under the terms of Trust) of a life interest in Property.

Accordingly, based on the representation that neither Husband nor Wife is terminally ill as that term is defined in § 25.7520-3(b)(3), and assuming that Trust satisfies the requirements for a QPRT contained in § 25.2702-5(c), Husband's retained interest and Wife's retained interest will be valued under the actuarial tables prescribed under § 7520. Further, based on the representation that neither Husband nor Wife is terminally ill, and based on the representations regarding the timing of the proposal of this transaction, and the creation and funding of Purchasing Trust, we conclude that for federal gift tax purposes, the transfer of Property to Trust followed by the transfer by Purchasing Trust to Husband and Wife of cash or marketable securities equal to the value of the remainder interest each is transferring to Purchasing Trust, determined based upon the fair market value of Property on the date of transfer (as determined by an independent, expert appraiser) and the actuarial tables prescribed under of § 7520, will not constitute a taxable gift by either Husband or Wife to Purchasing Trust for federal gift tax purposes under § 2501. See Rev. Rul. 69-505, 1969-2 C.B. 179, providing an example of the methodology to be used to determine the interests transferred by each party in a similar fact situation (prior to the enactment of § 2702 and using the actuarial tables applicable at that time) except that in the revenue ruling, no consideration is exchanged. Further, in the present case, assuming Wife transfers to Husband sufficient consideration (i.e., consideration equal to the difference in value between the contingent life estates Husband and Wife exchanged as described in Rev. Rul. 69-505) then Husband will not be treated as making a gift to Wife.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the proposed transaction under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion regarding whether Trust qualifies as a QPRT under § 25.2702-5(c). In addition, we express no opinion on whether the corpus of Trust will be includible in the gross estate of either Husband or Wife under § 2036 or any other provision of the Code. Further, we are expressing no opinion regarding the fair market value of Property on the date Property is contributed to Trust.

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

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 taxpayers 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 L. MASNIK
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)
Copy for 6110 purposes

cc: