

The facts submitted are as follows:

Prior to Date 1, Father owned Residence outright. On Date 1, Father deeded his interest in Residence to Trust. Trust provides that Father would retain a term interest to possess and occupy Residence for y years.

Article VI, Paragraph (E) of Trust provides, in relevant part, that upon the expiration of the y year period, if Father is still living, Trust will be distributed outright to Father's daughters equally, or to the survivor of them, or, if neither daughter survives Father, Trust will continue for the benefit of Father's issue, as provided. If Father dies before expiration of the y year period, Trust will be distributed as Father appoints. To the extent Father fails to appoint Trust property, it will be distributed outright to Spouse, if then living, but if Spouse predeceases Father, then to Father's daughters equally, or to the survivor of them, or, if neither daughter survives Father, Trust will continue for the benefit of Father's issue, as provided.

Father serves as trustee of Trust. Trust was intended to qualify as a qualified personal residence trust (QPRT) as described in § 25.2702-5(c). Father reported the transfer of Residence to Trust on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return, for Year. Mother also filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return, for Year, consenting to split the gift pursuant to § 2513.

Father has two daughters, Daughter 1 and Daughter 2. Daughters 1 and 2 are adults.

On Date 2, Father, in his capacity as trustee of Trust, with the joinder and consent of Daughters 1 and 2, executed Modification to modify Trust. Modification is effective on Date 3. Modification provides that upon the expiration of the y year period, Daughters 1 and 2 are each granted the power to appoint an equal share of the corpus of the trust estate to themselves, or by unanimous agreement, they may direct the trustee to amend and restate the terms of Trust so as to provide a term interest to Father, Spouse, or both, as a gift by Daughters 1 and 2.

Trustee and Daughters 1 and 2 intend to amend and restate Trust (Amendment and Restatement) to grant a z year term interest to Father to possess and occupy Residence on or before Date 3. Article V of the proposed Amendment and Restatement provides, in relevant part, that upon the death of the term interest holder during the z year term, if the term interest holder's spouse, Spouse, survives the term interest holder, the remaining portion of the term holder's term interest will pass to Spouse, and Spouse shall have the continuing right to occupy Residence for the balance of the term. If Spouse does not survive the term interest holder, the trust estate will be distributed to Daughters 1 and 2. Upon expiration of the term and unless Daughters 1 and 2 agree to

an extension, the term interest will expire, and the trust estate will be distributed to Daughters 1 and 2 as tenants in common, or per stirpes to the issue of a deceased daughter, or, if none, to the surviving daughter. Each share for a grandchild or more remote descendant of Father who has not reached age 40 will be held in trust as provided.

It is represented that Father will resign as trustee after receipt of a favorable private letter ruling, and Daughters 1 and 2 will serve as co-trustees of the Amended and Restated Trust.

You have requested a ruling that §§ 2702(a)(1) and 2702(a)(2) will not apply to the proposed Amendment and Restatement.

LAW AND ANALYSIS

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) 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) 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 § 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(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)(5) provides that, in general, except as otherwise provided in § 25.2702-5(c)(5)(ii) and § 25.2702-5(c)(8), the governing instrument of a qualified personal residence trust must prohibit the trust from holding, for the entire term of the trust, any asset 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. Under § 25.2702-5(c)(5)(ii), the trust may hold certain assets listed in that section in addition to the personal residence.

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. 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 4.01(52) of Rev. Proc. 2008-3, 2008-1 I.R.B. 110, 118, 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. 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 instrument is substantially similar to the sample in section 4 of Rev. Proc. 2003-42 and the trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law.

Accordingly, based on the facts submitted and the representations made, we conclude that §§ 2702(a)(1) and 2702(a)(2) will not apply to the proposed Amendment and Restatement, as long as the proposed Amendment and Restatement, pursuant to which a term interest in Residence will be transferred from Daughters 1 and 2 to Father, is substantially similar to the sample in section 4 of Rev. Proc. 2003-42 and the amended and restated trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law, and if Residence qualifies as a personal residence as defined in § 25.2702-5(c)(2). We also conclude that, upon

executing Amendment and Restatement, Daughters 1 and 2 will be transferring a term interest in Residence to Father by gift within the meaning of § 2501.

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. Specifically, no opinion is expressed or implied concerning whether the transfer of a term interest in Residence to Father, pursuant to the Amendment and Restatement, would result in Residence being included in the gross estate of Father under § 2036.

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

Enclosure:

Copy of letter for section 6110 purposes