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LEGEND

Date 1 =
Decedent =
Revocable Trust =

Spouse =
Remainder Trust 1 =
Remainder Trust 2 =

Child 1 =
Child 2 =
Date 2 =
Date 3 =
Agreement =

State =
Date 4 =
State Court =

Statute 1 =
Statute 2 =
Statute 3 =

Dear :

This letter responds to your authorized representative's letter dated July 14, 2010, and subsequent correspondence, requesting rulings concerning the federal gift and estate tax treatment of the proposed division of a trust into two trusts and the subsequent renunciation of a qualified income interest in one of the trusts.

FACTS

The facts submitted and the representations made are summarized as follows: On Date 1, Decedent created Revocable Trust, which became irrevocable upon Decedent's death. Also on Date 1, Decedent's wife, Spouse, created and funded two irrevocable trusts, Remainder Trust 1 and Remainder Trust 2, for the benefit of two adult children, Child 1 and Child 2, respectively. Decedent died on Date 2, survived by Spouse, Child 1, and Child 2.

Pursuant to Section 5.2 of Revocable Trust, the trustees are to transfer to a separate trust, Marital Trust, a fraction of the remaining trust estate determined as follows: the numerator of the fraction will be the smallest pecuniary amount that, if given outright to Spouse, would eliminate or reduce to the lowest possible sum the federal estate tax liability of Decedent's estate. This amount is to be calculated by taking into account Decedent's applicable exclusion amount and all other tax credits, deductions, and other preferences allowed to Decedent's estate, based on the assumption that an election would be made to qualify all of the property in Marital Trust for the marital deduction under § 2056(b)(7) of the Internal Revenue Code (Code). The denominator of the fraction is the balance of the trust estate available for distribution. The current trustees of Marital Trust are Spouse, Child 1, and Child 2.

Under Article 6 of Revocable Trust, the net income of Marital Trust is required to be distributed to Spouse, or applied for her benefit, on a quarterly or more frequent basis and any income accrued at the time of Spouse's death is to be distributed to Spouse's estate. The trustees are permitted to distribute principal to Spouse for her health, education, maintenance and support. Upon the death of Spouse, after providing for the payment of estate taxes resulting from the inclusion of Marital Trust in Spouse's estate, the trustees of Marital Trust will distribute the then remaining Marital Trust assets equally to the trustees of the irrevocable trusts for the benefit of Child 1 and Child 2 (Remainder Trust 1 and Remainder Trust 2, respectively).

Decedent's personal representative elected on the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, to treat Marital Trust as qualified terminable interest property (QTIP) under § 2056(b)(7).

On Date 3, the trustees of Marital Trust, Remainder Trust 1, and Remainder Trust 2 entered into a settlement agreement, Agreement, relating to Marital Trust. The terms of Agreement provide as follows:

(a) The trustees of Marital Trust intend to divide Marital Trust into two separate trust shares (Marital Trust A and Marital Trust B, respectively). Each share will be administered as a separate trust for the benefit of Spouse upon the same terms as Marital Trust and the trustees of Marital Trust will be the trustees of Marital Trust A and Marital Trust B.

(b) Marital Trust A will be funded with a fractional share of Marital Trust, with the numerator of the fraction being equal to a dollar amount selected by the trustees in their sole discretion (Marital Trust A Funding) and the denominator of the fraction being equal to the entire balance of Marital Trust. Marital Trust B is to be funded with a fractional share of Marital Trust, with the numerator of the fraction being equal to the entire balance of Marital Trust less the amount of Marital Trust A Funding and the denominator of the fraction being equal to the entire balance of Marital Trust.

(c) Upon the funding of Marital Trust A, Spouse will renounce any right, title or interest she has in Marital Trust A and allow the assets of Marital Trust A to be distributed equally to Remainder Trust 1 and Remainder Trust 2 (Remainder Beneficiaries). To the extent Spouse's renunciation of her right, title and interest in Marital Trust A causes a federal gift tax to be owing under § 2519, Spouse renounces any right Spouse has to recover any such gift tax from the Remainder Beneficiaries under § 2207A.

(d) The trustees of Marital Trust will obtain a State court order authorizing the actions contemplated under Agreement.

On Date 4, State Court issued an order approving the terms of Agreement.

Section 14.25 of Revocable Trust permits trustees to sever any trust on a fractional basis into two or more separate trusts, so long as the resulting trusts are held on the same beneficial terms and conditions as the original trust before the severance.

Statute 1 provides that after notice to the qualified beneficiaries, a trustee may divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trusts.

Statute 2 provides that after the settlor's death, a trust may be modified at any time as provided in Statute 3 upon the unanimous agreement of the trustee and all qualified beneficiaries. Modification of a trust as authorized in this section is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

Statute 3 provides that in modifying a trust, a court may amend or change the terms of the trust, including terms governing distribution of the trust income or principal

or terms governing the administration of the trust; terminate the trust in whole or in part; direct or permit the trustee to do acts that are not authorized or that are required by the terms of the trust; or prohibit the trustee from performing acts that are permitted or required by the terms of the trust.

You have requested the following rulings:

1. The division of Marital Trust into Marital Trust A and Marital Trust B pursuant to Agreement will not disqualify Marital Trust A or Marital Trust B as QTIP trusts.

2. When Spouse renounces her income interest in Marital Trust A, Spouse will be considered to have made a transfer of her income interest in Marital Trust A under § 2511 and a gift of all the property then owned by Marital Trust A, other than Spouse's qualifying income interest in Marital Trust A, under § 2519.

3. When Spouse waives her right of recovery provided by § 2207A(b), Spouse will be treated as having transferred the unrecovered gift tax amount to Remainder Trust 1 and Remainder Trust 2, from which the recovery could have been obtained. The amount of the gift will be the amount of the reimbursement to which Spouse was entitled but for her waiver.

4. When Spouse renounces her right, title and interest in Marital Trust A, the value of Spouse's lifetime income and discretionary principal interest in Marital Trust B will not be valued at zero under § 2702.

5. When Spouse renounces her right, title and interest in Marital Trust A, Spouse will not be deemed to have made a gift of the property held in Marital Trust B under § 2519.

6. After the division of Marital Trust into Marital Trust A and Marital Trust B, the subsequent termination of Marital Trust A will not cause Marital Trust B to fail to be treated as a QTIP trust under § 2056.

7. When Spouse renounces her right, title and interest in Marital Trust A, then Marital Trust A will not be includible in Spouse's gross estate under § 2044(b)(2).

LAW

Section 2056(b)(7) allows an estate tax marital deduction for qualified terminable interest property. Under § 2056(b)(7)(B)(i), the term "qualified terminable interest property" means property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which the qualified terminable interest election under § 2056(b)(7)(B)(v) applies. Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if the surviving spouse is

entitled to all the income from the property, payable annually or at more frequent intervals, and no person has a power to appoint any part of the property to any person other than the surviving spouse during the surviving spouse's life.

Section 2044(a) provides that the value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life. Section 2044(b) provides that § 2044(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) and § 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2501 imposes a tax on the transfer of property by gift by an individual. Under § 2502(c), the gift tax imposed under § 2501 is the liability of the donor. Section 2511(a) 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 25.2511-1(c)(1) of the Gift Tax Regulations 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 25.2511-2(a) provides that the gift tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

Section 2519(a) provides that any disposition of all or part of a qualifying income interest for life in any property to which § 2519 applies is treated as a transfer of all interests in the property other than the qualifying income interest. Section 2519(b) provides that § 2519 applies to any property if a deduction was allowed with respect to the transfer of such property to the donor under § 2056(b)(7).

Section 25.2519-1(a) provides that if a donee spouse makes a disposition of all or part of a qualifying income interest for life in any property for which a deduction was allowed under § 2056(b)(7), the donee spouse is treated for purposes of chapters 11 and 12 as transferring all interests in property other than the qualifying income interest. If the donee spouse makes a disposition of part of a qualifying income interest for life in trust corpus, the spouse is treated under § 2519 as making a transfer subject to chapters 11 and 12 of the entire trust other than the qualifying income interest for life. Therefore, the donee spouse is treated as making a gift under § 2519 of the entire trust less the qualifying income interest, and is treated for purposes of § 2036 as having transferred the entire trust corpus, including that portion of the trust corpus from which the retained income interest is payable. A transfer of all or a portion of the income

interest of the spouse is a transfer by the spouse under § 2511.

Section 25.2519-1(c)(1) provides that the amount treated as a transfer under § 2519 upon a disposition of all or part of a qualifying income interest for life in qualified terminable interest property is equal to the fair market value of the entire property subject to the qualifying income interest, determined on the date of the disposition (including any accumulated income and not reduced by any amount excluded from total gifts under § 2503(b) with respect to the transfer creating the interest), less the value of the qualifying income interest in the property on the date of the disposition. The gift tax consequences of the disposition of the qualifying income interest are determined separately under § 25.2511-2.

Section 25.2519-1(c)(4) provides that the amount treated as a transfer under § 25.2519-1(c)(1) is further reduced by the amount the donee spouse is entitled to recover under § 2207A(b). If the donee spouse is entitled to recover gift tax under § 2207A(b), the amount of the gift tax recoverable and the value of the remainder interest treated as transferred under § 2519 are determined by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability. The gift tax consequences of failing to exercise the right of recovery are determined separately under § 25.2207A-1(b).

Section 2207A(b) provides that, if for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under § 2519, such person shall be entitled to recover from the person receiving the property the amount by which the total tax for such year under chapter 12 exceeds the total tax that would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

Under § 25.2207A-1(a), if an individual is treated as transferring an interest in property by reason of § 2519, the individual is entitled to recover from the “person receiving the property” the amount of gift tax attributable to that property. The value of property to which § 25.2207A-1(a) applies is the value of all interests in the property other than the qualifying income interest. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the total amount of gifts, if no federal gift tax is attributable to the property. The right of recovery arises at the time the federal gift tax is actually paid by the transferor subject to § 2519.

Section 25.2207A-1(b)(1) provides that the failure of a person to exercise a right of recovery provided by § 2207A(b) upon a lifetime transfer subject to § 2519 is treated as a transfer for federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery could have been obtained. See § 25.2511-1. The transfer is considered to be made when the right to recovery is no longer enforceable under

applicable law and is treated as a gift even if recovery is impossible.

Section 25.2207A-1(b)(2) provides that the transferor subject to § 2519 may execute a written waiver of the right of recovery arising under § 2207A before that right of recovery becomes unenforceable. If a waiver is executed, the transfer of the unrecovered amounts by the transferor is considered to be made on the later of (i) the date of the valid and irrevocable waiver rendering the right of recovery no longer enforceable, or (ii) the date of the payment of the tax by the transferor.

Section 25.2207A-1(c) provides that the amount of federal gift tax attributable to all properties includible in the total amount of gifts under § 2519 made during the calendar year is the amount by which the total federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 that has been paid, exceeds the total federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 that would have been paid if the value of the properties includible in the total amount of gifts by reason of § 2519 had not been included.

Section 25.2207A-1(d) provides that a person's right of recovery with respect to a particular property is an amount equal to the amount determined in § 25.2207A-1(c) multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the total amount of gifts made during the calendar year by reason of § 2519, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the total amount of gifts made during the calendar year by reason of § 2519, less any deductions allowed with respect to those properties.

Section 25.2207A-1(e) provides that, if the property is in trust at the time of the transfer, the "person receiving the property" is the trustee, and, if the property does not remain in trust, any person receiving the property prior to the expiration of the right of recovery.

Section 2702(a)(1) provides that solely for the purpose 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 which is not a qualified interest (as defined in § 2702(b)) shall be treated as being zero and the value of any retained interest that is a qualified interest (as defined in § 2702(b)) shall be determined under § 7520. Under § 25.2702-2(a)(3), the term "retained" means held by the same individual both before and after the transfer in trust.

Ruling 1

Pursuant to the terms of Marital Trust and with respect to the qualified terminable interest property election made by Decedent's estate, the assets of Marital Trust are treated as qualified terminable interest property under § 2056(b)(7)(i). Spouse has a qualifying income interest for life in Marital Trust, and Remainder Trust 1 and Remainder Trust 2 are the remainder beneficiaries of Marital Trust. After the proposed division of Marital Trust into Marital Trust A and Marital Trust B pursuant to the applicable State law, Spouse will have a qualifying income interest for life in both Marital Trust A and Marital Trust B, and Remainder Trust 1 and Remainder Trust 2 will be the remainder beneficiaries of both Marital Trust A and Marital Trust B. Marital Trust A and Marital Trust B will have terms identical to Marital Trust. Therefore, the division of Marital Trust into Marital Trust A and Marital Trust B pursuant to the terms of Agreement will not disqualify Marital Trust A and Marital Trust B as QTIP trusts under § 2056(b)(7).

Ruling 2

When Spouse renounces her income interest in Marital Trust A, then the renunciation will be deemed a gift of Spouse's income interest in Marital Trust A under § 2511, and a gift of all the property owned by Marital Trust A, other than Spouse's qualifying income interest in Marital Trust A, under § 2519. Spouse's gift tax liability for the transfer of her qualifying income interest in Marital Trust A will be determined under § 25.2511-2.

Ruling 3

Pursuant to § 2207A(b), Spouse has the right to recover from Remainder Trust 1 and Remainder Trust 2 the amount of gift tax payable by Spouse because of the deemed transfer under § 2519. As a result, the deemed transfer under § 2519 will be treated as a net gift. The amount of the gift will equal the value of all the property then owned by Marital Trust A subject to the qualifying income interest, determined on the date of disposition and reduced by the amount of gift taxes Spouse has the right to recover from Remainder Trust 1 and Remainder Trust 2. If Spouse waives her right of recovery provided by § 2207A(b), then under § 2511, Spouse is treated as making an additional gift by transferring the unrecovered gift tax amount to Remainder Trust 1 and Remainder Trust 2, from which the recovery could have been obtained. The amount of the gift will be the amount of reimbursement to which Spouse was entitled but for her waiver.

Ruling 4

Pursuant to State law and the representations made herein, Marital Trust will be divided into Marital Trust A and Marital Trust B, and will be subsequently funded as separate trusts. As a result, Spouse's interest in Marital Trust A will be separate and distinct from her interest in Marital Trust B. Therefore, when Spouse renounces her

right, title and interest in Marital Trust A, Spouse's interest in Marital Trust B is not treated as a retained interest for purposes of § 2702(a)(1). Accordingly, Spouse's renunciation of her entire interest in Marital Trust A will not result in Spouse's interest in Marital Trust B being valued at zero under § 2702.

Ruling 5

As stated above, pursuant to State law and the representations made herein, after the division of Marital Trust, Spouse's interest in Marital Trust A will be separate and distinct from her interest in Marital Trust B. Therefore, when Spouse renounces her right, title and interest in Marital Trust A, Spouse will not be deemed to have made a gift of any portion of the assets in Marital Trust B under § 2519.

Ruling 6

As stated above, pursuant to State law and the representations made herein, after the division of Marital Trust, Spouse's interest in Marital Trust A will be separate and distinct from her interest in Marital Trust B. Therefore, when Spouse renounces her right, title and interest in Marital Trust A, the termination of Marital Trust A will not cause Marital Trust B to fail to be treated as a QTIP trust under § 2056.

Ruling 7

When Spouse renounces her right, title and interest in Marital Trust A, Spouse will be deemed to have made a transfer of all of the property of Marital Trust A, other than her qualifying income interest therein, under § 2519. Section 2044(a) provides that the value of Spouse's gross estate shall include the value of any property in which Spouse had a qualifying income interest for life. Section 2044(b)(2) provides that § 2044(a) does not apply to any property if § 2519 applies to the disposition of part or all of that property prior to Spouse's death. Therefore, the property owned by Marital Trust A that is deemed transferred pursuant to § 2519 will not be included in Spouse's gross estate under § 2044(a) because of the application of § 2044(b)(2).

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 in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Code are in effect during the period at issue.

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.

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.

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

Sincerely,

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes