

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

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PLR-117547-16

Date:

October 03, 2016

### Legend

Decedent

Spouse

Child 1

Child 2

Child 3

Date 1

Date 2

Date 3

Date 4

Date 5

Revocable Trust

Marital Trust

CLUT

Charity

Attorney

County Court

State

State Statute 1

State Statute 2

State Statute 3

a

Dear :

This letter responds to your authorized representative's letter dated May 31, 2016, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt trust and a non-exempt trust, to make a "reverse" qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code for the exempt trust, and other related rulings.

The facts submitted and representations made are as follows:

Decedent executed Revocable Trust on Date 1. Revocable Trust has been amended several times, most recently on Date 2. Revocable Trust became irrevocable upon Decedent's death on Date 3.

Article IV, Paragraph B, of Revocable Trust provides, in relevant part, that upon Decedent's death, if Decedent is survived by Spouse, a pecuniary amount is to be set aside as a marital bequest (Marital Trust). The marital bequest is to be divided and allocated by the trustee, as of the date of death of Decedent and according to the fair market value of the assets constituting the marital bequest at the time or times of allocation, into two separate trusts, the Marital Election Trust and the Non-exempt Marital Trust. The trustee is to allocate to the Marital Election Trust a fraction of the marital bequest the numerator of which is equal to the amount of Decedent's generation-skipping transfer (GST) exemption available at Decedent's death and the denominator of which is equal to the value of the marital bequest. The remaining balance of the marital bequest is to be allocated to the Non-exempt Marital Trust.

Article IV, Paragraph B, further provides that all of the net income of both the Marital Election Trust and the Non-exempt Marital Trust are to be paid to Spouse at least quarter-annually. The trustee may pay the principal of the trusts to Spouse for her health, welfare, support, and reasonable comfort, provided that no payments shall be made from the Marital Election Trust so long as any property remains in the Non-exempt Marital Trust. Upon the death of Spouse, all remaining principal is to be added to a residuary trust (Residuary Trust).

Article V, Paragraph D, provides, in relevant part, that upon the death of the last to die of Decedent and Spouse, the Residuary Trust is to be divided as follows: (i) 50 percent of the assets are to fund CLUT, a charitable lead unitrust; (ii) the remaining 50 percent of the assets is to fund trusts for the benefit of Decedent's children, Child 1, Child 2, and Child 3.

Article VII, provides, in relevant part, that CLUT is to pay an annual unitrust amount to Charity for 25 years. The unitrust amount is to be the percentage of the entire trust that will produce a remainder interest to Decedent's grandchildren equal in value to the amount of GST exemption available to Decedent upon his death.

Decedent died on Date 3, survived by Spouse. Spouse, in her capacity as personal representative of Decedent's estate, hired Attorney to prepare Decedent's estate tax return and to provide advice regarding estate administration matters. In preparing Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, Attorney failed to divide Marital Trust into the Marital Election Trust and the Non-exempt Marital Trust as required under the terms of Revocable Trust. Instead, Attorney treated the residuary of Decedent's gross estate as "net assets passing to surviving spouse." It was Attorney's intention to make a QTIP election with respect to all of the assets passing to Spouse from Marital Trust and to allocate Decedent's unused GST exemption of \$a to the assets passing to Spouse in the Marital Election Trust. However, in preparing the Schedule R, Attorney incorrectly listed CLUT instead of the Marital Election Trust and as a result failed to properly make a reverse QTIP election for the Marital Election Trust.

Spouse died on Date 4. Attorney's failure to divide Marital Trust into the Marital Election Trust and Non-exempt Marital Trust and to make a reverse QTIP election for the Marital Election Trust was discovered shortly after Spouse's death. It is represented that Decedent has sufficient GST exemption available to allocate to the Marital Election Trust.

The current trustees of Marital Trust petitioned County Court to seek a court order with respect to certain ambiguities in the language of Revocable Trust relating to the funding of CLUT. On Date 5, County Court ordered, in relevant part, that Marital Trust is to be divided into two trusts, the Marital Election Trust with assets having a fair market value of \$a (Decedent's available GST exemption), and the Non-exempt Marital Trust with the balance of Marital Trust assets. CLUT is to be funded first from the assets of the Marital Election Trust and then from the assets of the Non-exempt Marital Trust so that the total assets in CLUT on the date of allocation are equal to one-half of the combined assets of the Marital Election Trust and Non-exempt Marital Trust just prior to the date of allocation. The remaining portion of the Non-exempt Marital Trust will fund the trusts for the benefit of Decedent's children.

County Court further ordered that the representatives of Spouse's estate may allocate Spouse's available GST exemption to CLUT. The unitrust percentage being paid from CLUT will be calculated so that the federal estate tax value of the remainder will equal the sum of the amount of the GST exemption from Decedent plus the amount of the GST exemption from Spouse, and CLUT will have an inclusion ratio equal to zero for GST purposes. Additionally, CLUT may be divided into two charitable lead unitrusts, one with assets from the Marital Election Trust and one with assets from the Non-exempt Marital Trust. If CLUT is divided into two charitable lead unitrusts, then Decedent's GST exemption will determine the unitrust amount of the charitable lead unitrust that is funded from the Marital Election Trust and Spouse's GST exemption will determine the unitrust amount of the charitable lead unitrust that is funded from the

Non-Exempt Marital Trust. County Court's order is contingent upon a favorable private letter ruling from the Internal Revenue Service

State Statute 1 provides that after notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may divide trust property into two or more separate portions or trusts and allocate property between them if the trusts have substantially identical terms and conditions or if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

State Statute 2 provides that the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention.

State Statute 3 provides that to achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

You have requested the following rulings:

1. An extension of time under §§ 301.9100-1 and 301.9100-3 to sever Marital Trust into the Marital Election Trust and the Non-exempt Marital Trust pursuant to § 26.2654-1(b) of the Generation-Skipping Transfer Tax Regulations.
2. An extension of time under §§ 301.9100-1 and 301.9100-3 to make a "reverse" QTIP election under § 2652(a)(3) for the Marital Election Trust.
3. The automatic allocation rules of § 2632(e) will operate to cause the unused portion of Decedent's GST exemption to be allocated to the Marital Election Trust.
4. Upon division of CLUT into two charitable lead unitrusts, the charitable interests of each charitable lead unitrust will qualify as a charitable lead interest for purposes of § 2055(e)(2)(B).
5. Upon division of CLUT into two charitable lead unitrusts, the charitable lead unitrust funded from the Marital Election Trust will be treated as if Decedent is the transferor for GST tax purposes.
6. Upon division of CLUT into two charitable lead unitrusts, the charitable lead unitrust funded from the Non-exempt Marital Trust will be treated as if Spouse is the transferor for GST tax purposes.

7. The proposed modification of Revocable Trust pursuant to the Date 5 County Court order will not be treated as a gift under § 2501.
8. The proposed modification of Revocable Trust pursuant to the Date 5 County Court order will not cause recognition of gain or loss under § 1001.

## LAW AND ANALYSIS

### Rulings 1-3

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2044 provides, in part, that the value of the gross estate shall include the value of any property for which a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) in which the decedent had a qualifying income interest for life.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides that where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest -- (A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and (B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse; and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B)) -- (C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life; and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, the term "return of tax imposed by § 2001" means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means, with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect on Decedent's date of death, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(e)(1) (former § 2632(c)(1) at the time of Decedent's death) provides that, in general, any portion of an individual's GST exemption which has not

been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(d)(2) provides that a decedent's unused GST exemption is automatically allocated on the due date for filing the Form 706, or Form 706NA, to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. The automatic allocation is irrevocable.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made ("reverse" QTIP election).

Section 26.2652-2(a) provides, in part, that a "reverse" QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor and the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original instrument and the severance occurs prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor and the new trusts are severed on a fractional basis.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under the terms of Revocable Trust, CLUT was to be formed and funded after the death of the last to die of Decedent and Spouse. However, on Decedent's Form 706, Attorney allocated Decedent's available GST exemption to CLUT, a trust that would not be created until after Spouse's death. Decedent could not allocate his GST exemption to a trust that did not exist; therefore, Decedent's GST exemption is still available.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to sever Marital Trust into the Marital Election Trust and the Non-exempt Marital Trust and to make a reverse QTIP election with respect to the Marital Election Trust. Further, we rule that the automatic allocation rules of § 2632(e) apply to automatically allocate Decedent's unused GST



exemption to the Marital Election Trust.

The reverse QTIP election should be made on a supplemental Form 706 for Decedent. The Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

#### Ruling 4

Section 2055(a)(2) provides that for purposes of the federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

Under § 20.2055-2(a), the amount passing to charity must be ascertainable and determinable as of the date of death. Similarly, under § 20.2055-2(b)(1), if the trustee is empowered to divert the property or fund, in whole or in part, to a noncharitable purpose, the deduction is limited to that portion, if any, of the property which is exempt from an exercise of the power.

Under § 2055(e)(2), the estate tax charitable deduction is not allowable where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in § 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055(a), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Under § 20.2055-2(e)(1)(i), in the case of decedents dying after December 31, 1969, where an interest in property passes from the decedent for charitable purposes and an interest in the same property passes from the decedent for private purposes, no deduction is allowed under § 2055(a) for the value of the interest passing for charitable purposes unless the interest is a “deductible interest.”

Under § 20.2055-2(e)(2)(vii)(a), the term “deductible interest” includes a unitrust interest. A “unitrust interest” is a right to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest. The unitrust interest may be paid for a specified term, or for the life or lives of named individuals, each of whom must be living at the creation of the trust.

Under § 20.2055-2(e)(2)(vii)(b), a charitable interest is a unitrust interest only if it is a unitrust interest in every respect. Under § 20.2055-2(e)(2)(vii)(d), where a unitrust interest is in trust, the instrument may provide that income of the trust in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under § 2055 is limited to the fair market value of the unitrust interest. Under § 20.2055-2(f)(2)(v), the present value of a unitrust interest is determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

In this case, under the law of State, CLUT may be divided into two charitable lead unitrusts. Under the law of State, a court may modify the administrative or dispositive terms of a trust, because of circumstances not anticipated by the settlor. In addition, the proposed modification will further Decedent’s intent to maximize the utility of the GST exemption amount when determining the unitrust amount of CLUT. Under the modification, Decedent’s GST exemption will determine the unitrust amount of the charitable lead unitrust that is funded from the Marital Election Trust and Spouse’s GST exemption will determine the unitrust amount of the charitable lead unitrust that is funded from the Non-Exempt Marital Trust.

Each charitable lead unitrust will be required to pay a fixed percentage of the assets of such trust, determined annually. The unitrust interest will be paid at least annually for a term of 25 years. Accordingly, based on the facts submitted and representations made, we conclude that after the division of CLUT into two charitable lead unitrusts, the charitable interests of each charitable lead unitrust will qualify as a charitable lead interest.

#### Rulings 5-6

It was Attorney’s intention to make a QTIP election with respect to all of the assets passing to Spouse from Marital Trust and to allocate Decedent’s unused GST exemption, \$a, to the assets passing to Spouse in the Marital Election Trust. Accordingly under § 2044, the assets of Marital Trust are included in the gross estate of Spouse. With the granting of relief under § 301.9100-3 under this ruling request, Marital Trust is divided into Marital Election Trust and Non-exempt Marital Trust. Both of these trusts will be included in Spouse’s gross estate under § 2044 for estate tax purposes.

Spouse will also be treated as the transferor, under § 2652(a)(1), of the Non-exempt Marital Trust for GST tax purposes. Some of the assets of the Non-exempt Marital Trust will fund a charitable lead unitrust and the remaining assets will fund trusts for the benefit of Decedent's children. Accordingly, based on the facts submitted and representations made, we conclude that Spouse will be treated as the transferor for the charitable lead unitrust and the trusts for the benefit of Decedent's children for GST tax purposes.

Decedent will be the transferor of the Marital Election Trust for GST tax purposes. In accordance with the proposed modification of the trust, the Marital Election Trust will fund a charitable lead unitrust. Accordingly, based on the facts submitted and representations made, we conclude that Decedent will be treated as the transferor of this charitable lead unitrust for GST tax purposes.

#### Ruling 7

Section 2501(a) imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual.

Section 2511(a) provides that the gift tax 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 the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than adequate and full 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 to be a gift, and is included in computing the amount of gifts made during the calendar year.

In this case, the beneficiaries of Revocable Trust will have the same interests after the proposed modification that they had prior to the modification. Because the beneficial interests of the beneficiaries are substantially the same, no transfer of property will be deemed to occur as a result of the modification. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modification of Revocable Trust pursuant to the Date 5 County Court order will not be treated as a gift under § 2501.

#### Ruling 8

Section 61(a)(3) and (15) provides that gross income includes gains derived from dealings in property and income from an interest in an estate or trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) provides that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c) the entire amount of gain or loss on the sale or exchange of property shall be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. *Cottage Savings Association v. Commissioner*, 499 U.S. 554 (1991). A material difference exists when the exchanged properties embody legal entitlements different in kind or extent or if they confer different rights and powers. *Id.* at 565.

Rev. Rul. 69-486, 1969-2 C.B. 159, involved two beneficiaries of a trust who by mutual agreement, requested that the trustee distribute all of the trust corpus consisting of notes to one of the beneficiaries and all of the trust corpus consisting of common stock to the other beneficiary. The trust instrument as well as local law was silent regarding whether the trustee had the authority to make such a non-pro rata distribution of property in kind. Because the trustee was not specifically authorized to make an allocation of specific property in kind, the beneficiaries were treated as having an absolute right to a ratable in-kind distribution. Rev. Rul. 69-486 treated the beneficiaries as receiving the notes and common stock pro rata, followed by an exchange between the beneficiaries giving all of the common stock to one and all of the notes to the other. Because, in substance, an exchange between the beneficiaries was deemed to occur, Rev. Rul. 69-486 held that the beneficiaries recognized gain under §§ 1001 and 1002.

The present case is distinguishable from Rev. Rul. 69-486 because the trust instrument allows for non-pro rata distributions. Furthermore, the division of Marital Trust into the Marital Election Trust and the Non-exempt Marital Trust serves primarily to effect the terms of the trust agreement and does not change the interests of the remainder beneficiaries. The beneficiaries of Revocable Trust will have the same interests after the proposed modification that they had prior to the modification. Because the beneficial interests of the beneficiaries are substantially the same, no transfer of property will be deemed to occur as a result of the modification. Accordingly,

based on the facts submitted and representations made, we conclude that the proposed modification of Revocable Trust pursuant to the Date 5 County Court order will not constitute a taxable disposition of trust assets for federal income tax purposes and the trusts and beneficiaries will not realize gain under § 1001 as a result of the division.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion 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) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

Leslie H. Finlow

By: Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter