

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:

CC:PSI:B04

PLR-113001-17

Date:

November 16, 2017

Legend

Husband
Proceeds Trust

Wife
Child 1
Child 2
Child 3
Child 4
Child 5
Child 6
State 1
State 2
Real Property
Agreement

Dear :

This letter responds to your authorized representative's letter dated April 17, 2017, requesting gift tax rulings.

The facts and representations submitted are as follows:

Prior to October 8, 1990, Husband, Wife, and their six children (Child 1, Child 2, Child 3, Child 4, Child 5, and Child 6) purchased Real Property, located in State 1, from an unrelated party for fair market value. Husband, Wife, and Children 1 through 6 executed an Agreement in connection with Real Property acquisition. In accordance with the terms of the Agreement, Husband, Wife, and Children 1 through 6 each paid

the actuarial value of their respective interest from their own resources and none of the six children used any funds acquired from their parents to acquire their respective interests. Pursuant to the Agreement, Wife acquired a life interest in the use of and income from Real Property, Husband acquired a life interest in the use of and income from Real Property that will become effective upon the death of Wife, and the children each acquired a one-sixth common undivided interest in the remainder. The parties represent that they do not possess any property as life tenants and remaindermen acquired after October 8, 1990. Husband and Wife are referred to individually as "Life Tenant" and together as "Life Tenants," and Children 1 through 6 are referred to as "Remaindermen."

In accordance with the terms of the Agreement, Proceeds Trust was created to receive the proceeds from the sale of certain real property subject to the Agreement. The proceeds from any future sale of Real Property is to be deposited in Proceeds Trust, but only to the extent the proceeds are attributable to that portion of Real Property subject to the Agreement (and held as a life estate and a remainder interest) at the time of the sale. Proceeds Trust provides that the trustees shall invest and reinvest the proceeds and pay to the current Life Tenant, at least annually, all income (but not principal or corpus), and upon the death of both Life Tenants, the trustees shall terminate Proceeds Trust and distribute the remaining trust assets to the Remaindermen in accordance with their respective interests. Proceeds Trust is governed under the law of State 2 and is sited in State 2. Proceeds Trust is irrevocable.

The Life Tenants now propose to execute and deliver to the Remaindermen a deed that conveys a geographically defined portion of the acreage of their life interests in Real Property. Under the law of State 1, the Remaindermen will become the outright owners of that geographically defined portion of Real Property upon receipt of the deed. The Life Tenants will be conveying their entire respective life interests in the geographically defined portion, and their interests in that geographically defined portion will be completely terminated. The remaining acreage of Real Property, not conveyed in the proposed transaction, will continue to be held as a life estate in the hands of the Life Tenants and a remainder interest by the Remaindermen.

You have requested the following rulings:

1. The remaining acreage of Real Property, not conveyed in the proposed transaction, will continue to be treated as resulting from a transfer occurring prior to October 8, 1990 for purposes of applying chapter 14. The proceeds of any later sale of this remaining acreage, along with the proceeds or reinvestments thereof, that will be held in Proceeds Trust will continue to be treated as resulting from a transfer occurring prior to October 8, 1990, for purposes of applying chapter 14.

2. The proposed conveyances by the Life Tenants of their respective interests in the geographically defined portion of Real Property for less than adequate and full consideration will be treated as a gift for federal gift tax purposes.
3. The proposed conveyances will not result in any portion of Real Property being includible in the gross estate of either of the Life Tenants for federal estate tax purposes.

LAW AND ANALYSIS

Ruling 1

The provisions of chapter 14 of the Code (§§ 2701-2704), were added by the Revenue Reconciliation Act of 1990 and are effective for transfers occurring after October 8, 1990.

Section 2702(a)(1) provides, generally, 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 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 shall be treated as being zero.

Section 2702(b) defines a qualified interest as (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually, (2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and (3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in (1) or (2) above.

Section 2702(c)(1) provides that 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 a trust. Section 2702(c)(3) defines a term interest as including a life interest in property.

Section 2702(d) provides that in the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only that portion shall be taken into account in applying § 2702 to the transfer.

In the instant case, with respect to the remaining acreage of Real Property that is not being conveyed, the Life Tenants and the Remaindermen will have substantially

identical interests both before and after the proposed conveyances. The proposed conveyances will not involve that portion of the acreage of Real Property the life estate of which will continue to be held by the Life Tenants. Accordingly, based on the facts submitted and representations made, we conclude that the remaining acreage of Real Property, not conveyed in the proposed transaction, will continue to be treated as resulting from a transfer occurring prior to October 8, 1990 for purposes of applying chapter 14. Furthermore, the proceeds of any later sale of this remaining acreage, along with the proceeds or reinvestments thereof, that will be held in Proceeds Trust will continue to be treated as resulting from a transfer occurring prior to October 8, 1990, for purposes of applying chapter 14.

Rulings 2 and 3

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

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of death.

Section 2035 provides, in part, that if the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the three-year period ending on the date of the decedent's death, and the value of such property (or an interest therein) would have been included in the decedent's gross estate under § 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death, the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

Section 2036 provides, in part, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death the possession or enjoyment of, or the right to the income from, the property, or the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2038 provides, in part, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in

conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the three-year period ending on the date of the decedent's death.

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during such calendar year by an individual.

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 2512(a) provides that, if a 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, the amount by which the value of the property exceeds the value of the consideration is deemed a gift.

Section 25.2511-2(b) of the Gift Tax Regulations provides that, as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or the benefit of another, the gift is complete.

Section 25.2512-5(d)(1) provides that if the valuation date for the gift is on or after May 1, 2009, the fair market value of annuities, life estates, terms of years, remainders, and reversions transferred on or after May 1, 2009, is the present value of such interest determined under § 25.2512-5(d)(2) and by use of standard or special § 7520 actuarial factors.

Section 25.2512-5(d)(2) provides that, when the donor transfers property in trust or otherwise and retains an interest therein, generally, the value of the gift is the value of the property transferred less the value of the donor's retained interest. However, if the donor transfers property after October 8, 1990, to or for the benefit of a member of the donor's family, the value of the gift is the value of the property transferred less the value of donor's retained interest as determined under § 2702. If the donor assigns or relinquishes an annuity, life estate, remainder, or reversion that the donor holds by virtue of a transfer previously made by the donor or another, the value of the gift is the value of the interest transferred.

In this case, prior to October 8, 1990, the Life Tenants held successive life interests in Real Property and the Remaindermen together held a remainder interest in Real Property. The Life Tenants never possessed a remainder interest in Real Property. The Life Tenants propose to convey a geographically defined portion of the

acreage of their life estate interests to the Remaindermen. To the extent that the conveyances are for less than adequate and full consideration, the conveyances will be treated as gifts for federal gift tax purposes. The gifts will be valued by using the actuarial value of the individual life estate interests determined by applying the § 7520 rate in effect for the month in which the conveyances take place.

Further, the Life Tenants will not be retaining any interest in, any right to alter or revoke, or any reversion of the geographically defined portion of the acreage that is conveyed to the Remaindermen. Accordingly, based on the facts submitted and representations made, we conclude that the proposed conveyances will not result in any portion of Real Property being includible in the gross estate of either of the Life Tenants for federal estate tax purposes.

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,

Karlene M. Lesho

Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes