

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Telephone Number:

Refer Reply To:
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Date:
May 22, 2018

RE:

LEGEND

- Date 1 =
- Decedent =
- Revocable Trust =
- Date 2 =
- Marital Trust =
- Bank =
- Spouse =
- Charitable Trust =
- Date 3 =
- Child 1 =
- Child 2 =
- State =
- Court =
- Statute 1 =
- X =
- Statute 2 =
- Date 4 =
- Statute 3 =

Dear :

This letter responds to your authorized representative's letter of November 14, 2017, and subsequent correspondence, requesting rulings on the income, gift, and estate tax consequences of a proposed transaction.

FACTS

The facts and representations submitted are summarized as follows:

On Date 1, Decedent created Revocable Trust, which became irrevocable upon Decedent's death on Date 2.

Article IV of Revocable Trust generally provides that, after certain specific bequests, the residue of Trust is to be held in further trust known as Marital Trust. Bank is the current trustee of Marital Trust.

Article IV, Paragraph E, governs Marital Trust and requires the trustee to pay Spouse all the net income of Marital Trust in annual or more frequent installments for her lifetime. In addition, the trustee is to pay Spouse as much principal as the trustee deems advisable for Spouse's health, education, support, and maintenance. Upon Spouse's death, after payment of any taxes attributable to Marital Trust's inclusion in Spouse's estate, the principal of Marital Trust is to be distributed to Charitable Trust, established under Article V of Revocable Trust.

Article IV, Paragraph E, specifically authorizes the executor of Decedent's estate to elect to have the assets passing to Marital Trust qualify for the marital deduction under § 2056(b)(7) of the Internal Revenue Code (Code).

Article IV, Paragraph E.3., further provides that if Spouse disclaims any part or all of Marital Trust, then any disclaimed property shall be added to and administered under the terms of Charitable Trust.

Article V provides that the residue of Marital Trust, including any funds passing via a disclaimer, shall continue to be held by Bank as trustee of Charitable Trust. Spouse represents that Charitable Trust will qualify as a charitable organization described in §§ 170(c), 170(b)(1)(A), 2522(a) and 2055(a).

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

On Date 3, Spouse, through Child 1 and Child 2 who serve as Spouse's Co-Conservators, and Bank, as trustee of Marital Trust, petitioned State Court for approval of trust division including as exhibits a Plan of Division Agreement and Nonjudicial Agreement pursuant to Statute 1 (collectively, Agreements).

Agreements provide for the division of Marital Trust into two separate but identical trusts, to be identified as Trust 1 and Trust 2. Trust 1 will be funded with cash and property having a net fair market value on the date of division equal in value to \$x. Trust 2 shall be funded with all remaining cash and property of Marital Trust. The division of Marital Trust will be done on a non-pro rata basis as authorized under Statute 2. Trust 1 and Trust 2 will be governed by and administered under Article IV(E) of Trust. On Date 4, State Court issued an order approving the nonjudicial settlement

agreement, contingent upon receipt of a favorable private letter ruling from the Internal Revenue Service.

Following the division of Marital Trust and the funding of Trust 1, Spouse will renounce her income interest in Trust 1. By order dated Date 4, Co-Conservators were granted authority to make a nonqualified disclaimer under Statute 3 on behalf of Spouse of all the assets of Trust 1.

As a consequence of Spouse's renunciation, the assets in Trust 1 will pass to Charitable Trust to be held and administered in accordance with the provisions of Article V of Revocable Trust.

Under Statute 1, a nonjudicial settlement is valid only to the extent the settlement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under State's trust code or other applicable law.

Statute 2 provides that on petition by a trustee or beneficiary, the court may divide a trust into two or more separate trusts, whether or not their terms are similar, if the court determines that dividing the trust is in the best interest of the beneficiaries and will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries. To facilitate the division, the trustee may divide the trust assets in kind, by pro rata or non-pro rata division, or by any combination of the methods.

Statute 3 provides that a person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whenever and however acquired.

You request the following rulings:

1. The division of Marital Trust into Trust 1 and Trust 2 on a non-pro rata basis will not cause Marital Trust, Trust 1, Trust 2 or any beneficiary of these three trusts to recognize ordinary income or loss, or capital gain or loss, under § 61 or § 1001.
2. The division of Marital Trust into Trust 1 and Trust 2 will not disqualify Trust 1 or Trust 2 as QTIP trusts under § 2056.
3. Spouse will be treated as having made a gift of her qualifying income interest in Trust 1 under § 2511 and as having made a gift of the remainder interest in Trust 1 under § 2519, and such gifts qualify for the gift tax charitable deduction.

4. The value of the property in Trust 1 deemed to be transferred under § 2519 will not be included in Spouse's gross estate under § 2044(a) because of the application of § 2044(b)(2).

5. Spouse's renunciation of her qualifying income interest in and discretionary principal from Trust 1 will not cause any property in Trust 2 to be deemed a gift by Spouse under § 2519.

6. Spouse's renunciation of her qualifying income interest in and discretionary principal from Trust 1 will not cause her interest in Trust 2 to be valued at zero under § 2702.

Ruling 1

Section 61(a)(3) provides that gross income includes gains derived from dealings in property and, under § 61(a)(15), from an interest in a 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), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

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

A partition of jointly owned property is not a sale or other disposition of property if the co-owners of the joint property sever their joint interests but do not acquire a new or additional interest as a result of the transaction. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56-437, 1956-2 C.B. 507.

The division of Marital Trust into Trust 1 and Trust 2 does not result in either the disposition or acquisition of any rights in Marital Trust assets. Each beneficiary continues to hold all of the interests under identical terms in the assets of Marital Trust through Trust 1 and Trust 2 before and after the division.

Accordingly, based on the facts submitted and the representations made, we conclude that the transfer of assets from Marital Trust to Trust 1 and Trust 2 in the proposed division will not result in realization of gain or loss under § 61 or 1001.

Ruling 2

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 2056(a) provides that 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) denies a marital deduction for interests passing to the surviving spouse that are “terminable interests,” that is interests in property passing to the surviving spouse that will terminate or fail on the lapse of time or on the occurrence of an event or contingency or on the failure of an event or contingency to occur, where on termination, an interest in the property passes to someone other than the surviving spouse.

Section 2056(b)(7) provides an exception to the terminable interest rule in the case of QTIP. Under § 2056(b)(7), for purposes of § 2056(a), QTIP is treated as passing to the surviving spouse and no part of the property is treated as passing to any person other than the surviving spouse.

Under § 2056(b)(7)(B)(i) and (ii), “qualified terminable interest property” means property which passes from the decedent, in which the surviving spouse is entitled for life 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.

Pursuant to the terms of Marital Trust and with respect to the QTIP election made by Decedent’s estate, the assets of Marital Trust are treated as QTIP under § 2056(b)(7)(i). Spouse has a qualifying income interest for life in Marital Trust. After the proposed division of Marital Trust into Trust 1 and Trust 2 pursuant to the order of Court and applicable State law, Spouse will have a qualifying income interest for life in both Trust 1 and Trust 2. Trust 1 and Trust 2 will have terms identical to Marital Trust. Therefore, based on the facts submitted and the representations made, the division of Marital Trust into Trust 1 and Trust 2 will not disqualify Trust 1 or Trust 2 as QTIP trusts under § 2056.

Rulings 3 and 5

Section 2501 provides that a tax is imposed on the transfer of property by gift by any individual.

Section 2511(a) provides, in part, 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 for purposes of chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which § 2519(a) applies is treated as a transfer of all interests in the property other than the qualifying income interest. Section 2519(b) provides that § 2519(a) 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 a transfer of all or a portion of the income interest of the spouse in QTIP is a transfer by the spouse under § 2511.

Section 25.2519-1(c) 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 QTIP 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 2522(a) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of charitable organizations described in § 2522(a).

When Spouse renounces her income interest in Trust 1, she will make a gift of her qualifying income interest under § 2511. In addition, Spouse will be treated as

having made a transfer of all of the property in Trust 1, other than her qualifying income interest, under § 2519. In this case, the entire amount that will be deemed transferred by Spouse under §§ 2511 and 2519 will pass to Charitable Trust. Assuming Charitable Trust is an organization described in § 2522(a), the transfers by Spouse under §§ 2511 and 2519 will qualify for the gift tax charitable deduction under § 2522(a).

Pursuant to the order of Court and applicable State law, after the division of Marital Trust, Spouse's interest in Trust 1 will be separate and distinct from her interest in Trust 2. Upon Spouse's renunciation of her qualifying income interest in Trust 1, she will not be deemed to have made a gift of all or any portion of the property in Trust 2 because Trust 2 will be established and funded as a separate trust and will not be affected by Spouse's renunciation of her qualifying income interest in Trust 1. Accordingly, based on the facts submitted and the representations made, Spouse's renunciation of her entire interest in the property in Trust 1 will not cause any property in Trust 2 to be deemed a gift by Spouse under § 2519.

Ruling 4

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 20.2044-1(b) of the Estate Tax Regulations provides that for purposes of § 1014 and chapters 11 and 13 of subtitle B of the Code, property included in a decedent's gross estate under § 2044 is considered to have been acquired from or have passed from the decedent to the person receiving the property upon the decedent's death. Thus, for example, the property is treated as passing from the decedent for purposes of determining the availability of the charitable deduction under § 2055, the marital deduction under § 2056, and special use valuation under § 2032A.

When Spouse renounces her interest in the property in Trust 1, Spouse will be deemed to have made a transfer of all the property of Trust 1, other than her qualifying income interest therein, under § 2519. 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 death. Therefore, based on the facts submitted and the representations made, after Spouse renounces her entire interest in the property of Trust 1, the value of the property in Trust 1 deemed to be transferred under § 2519 will not be included in Spouse's gross estate under § 2044(a) because of the application of § 2044(b)(2).

Ruling 6

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 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.

Pursuant to the order of Court, Marital Trust will be divided into two separate trusts, Trust 1 and Trust 2. Spouse's interest in Trust 1 will be separate and distinct from her interest in Trust 2 and Spouse's renunciation of her entire interest in Trust 1 will not be treated as making a deemed gift under § 2519 with respect to Trust 2. Therefore, when Spouse renounces her entire interest in Trust 1, Spouse's interest in Trust 2 is not treated as a retained interest for purposes of § 2702(a)(1). Accordingly, based on the facts submitted and the representations made, Spouse's renunciation of her entire income interest in Trust 1 will not cause her interest in Trust 2 to be valued at zero under § 2702.

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. 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,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes
Copy of this letter