

Dear _____ :

This responds to your letter dated December 20, 2019, and subsequent correspondence, requesting rulings under § 2519 of the Internal Revenue Code (Code) regarding the division of a qualified terminable interest trust and distribution of trust assets as described below.

Facts

The facts submitted and representations made are as follows.

Decedent died in Year, survived by Spouse, Daughter 1, and Daughter 2. Part B of Decedent's Last Will and Testament created a marital trust, Qualified Trust.

Part B, Article III, section 3.1 provides that Spouse shall be the income beneficiary of Qualified Trust for life and, at Spouse's death, the original and substitute principal beneficiaries shall become income beneficiaries in proportion to their interests in principal.

Section 3.2 provides that the original principal beneficiaries of Qualified Trust shall be Daughter 1 and Daughter 2. Section 3.2 provides further that should either of the original principal beneficiaries die both intestate and without decedents, then the original principal beneficiary who survives her shall become substitute beneficiary of her interest.

Article IV provides that the interest of each beneficiary shall be held subject to the maximum spendthrift restraints permitted by State law.

Article V provides that Qualified Trust shall terminate upon the death of the last surviving income beneficiary. However, at any time after Spouse's death, Qualified Trust may be terminated as to a beneficiary's interest and any part of the trust property representing her interest may be distributed to that beneficiary if the trustee considers such distribution to be in the best interests of the beneficiary, considering the demonstrated ability of the beneficiary to handle money and property wisely, her judgment, prudence and discretion, and any other factors the trustee may consider relevant. The trustee may exercise the power of termination even if the beneficiary is restrained from alienating her interest.

Article VII, section 7.1.2 provides that during Spouse's lifetime income accruing to Qualified Trust shall be distributed monthly to Spouse or more frequently should the trustee see fit. Section 7.2 provides that should the trustee determine that Spouse needs resources for health, education, maintenance and support, and subject to the rights of the principal beneficiaries as forced heirs, the trustee is authorized to make one

or more distributions first of accumulated income, then principal, if necessary, for her benefit even though that distribution impairs the interests of the principal beneficiaries.

It is represented that the terms of Qualified Trust do not contain restrictions on the trustee's power to divide the trust.

On Decedent's estate tax return, Decedent's estate elected to treat Qualified Trust as qualified terminable interest property (QTIP) as provided in § 2056(b)(7) of the Code.

State Statute 1 authorizes a trustee to divide a trust into two or more trusts upon notice to the beneficiaries, provided that such division does not impair the rights of any beneficiary or adversely affect the accomplishment of the purposes of the trust. State Statute 1 provides further that a trust instrument may modify these rules, either to expand or to restrict the trustee's authority to combine or divide a trust. State Statute 2 authorizes Court to order the termination or modification of a trust, in whole or in part, if the continuance of the trust unchanged would defeat or substantially impair the purposes of the trust.

On Date 1, Trustee divided Qualified Trust into two trusts, Qualified Trust-A and Continuing Qualified Trust, both with terms and provisions identical to those set forth in Qualified Trust. Trustee placed \$x in cash and marketable securities into Qualified Trust-A and retained all other assets in Continuing Qualified Trust. The assets retained in Continuing Trust are income producing such that Spouse retains the enjoyment of the assets. On Date 2, Trustee and the beneficiaries of Qualified Trust-A petitioned Court for entry of an order with respect to Qualified Trust-A. On Date 3, finding that a continuation of Qualified Trust-A unchanged would defeat or substantially impair its purposes, Court entered Order. Order modifies the terms and provisions of Qualified Trust-A.

Article V of Qualified Trust-A, as modified by Order, provides that Qualified Trust-A shall terminate upon the death of the last surviving income beneficiary. However, at any time, including prior to Spouse's death, Qualified Trust-A may be terminated as to a beneficiary's interest and any part of the trust property representing her interest may be distributed to that beneficiary if the trustee considers such distribution to be in the best interests of the beneficiary, considering the demonstrated ability of the beneficiary to handle money and property wisely, her judgment, prudence and discretion, and any other factors the trustee may consider relevant. The trustee may exercise the power of termination even if the beneficiary is restrained from alienating her interest.

Article III, section 3.1, as modified by Order, provides that the original and principal beneficiaries of Qualified Trust-A shall become the income beneficiaries in proportion to their interests in the principal. Section 7.2, allowing the trustee to make distributions to Spouse for her health, education, maintenance and support, is deleted in

its entirety. Order further provides that, the terms and conditions of Qualified Trust-A shall be interpreted and applied as if Spouse had died on the date Order is entered, and that Trustees shall continue to be the trustee of Qualified Trust-A and Continuing Qualified Trust. Although Order is effective on Date 3, it is expressly conditioned on receipt of favorable rulings from the Internal Revenue Service prior to Date 4.

Rulings Requested

1. The division of Qualified Trust on Date 1 did not cause the assets remaining in Qualified Trust after the division (referred to as Continuing Qualified Trust) to be subject to the United States Gift Tax pursuant to § 2519 or 2511.
2. Spouse is deemed to have made a transfer of all of the property in Qualified Trust-A under § 2519, other than the value of her qualifying income interest, and Spouse is deemed to have made a transfer of her qualifying income interest in Qualified Trust-A under § 2511, on Date 3 upon entry of Order approving modifications by which the income interest of Spouse in Qualified Trust-A is terminated and distributions from Qualified Trust-A are permitted to be made prior to death of Spouse.

Law and Analysis

Section 2501 of the Code imposes a tax on the transfer of property by gift by an individual.

Section 2511 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 2519(a) provides that any disposition of all or part of a qualifying income interest for life in any property to which the section applies is treated as a transfer for gift tax purposes 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 25.2511-1(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 25.2519-1(a) provides that a transfer of all or a portion of the income interest of a spouse in QTIP property 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 QTIP 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.

In the present case, following the division of Qualified Trust on Date 1, the trusts resulting from the division, Qualified Trust-A and Continuing Qualified Trust, had terms and provisions identical to those set forth in Qualified Trust. Thus, the division of Qualified Trust did not change the beneficial interests of Spouse, Daughter 1 or Daughter 2 in the property originally held in Qualified Trust. Accordingly, based on the facts submitted and representations made, we rule that the division of Qualified Trust on Date 1 did not cause the assets remaining in Qualified Trust after the division (referred to as Continuing Qualified Trust) to be subject to the United States Gift Tax pursuant to § 2519 or 2511.

Order, however, modifies the terms of Qualified Trust-A to change the beneficial interests of Spouse, Daughter 1, and Daughter 2 in the property of Qualified Trust-A. Article V of Qualified Trust-A, which continues to provide that Qualified Trust-A shall terminate upon the death of the last surviving income beneficiary, is modified to provide that at any time, including prior to Spouse's death, Qualified Trust-A may be terminated as to a beneficiary's interest. In other words, Order terminates Spouse's income interest as of Date 3. The term "disposition" as used in § 2519, applies broadly to circumstances in which the surviving spouse's right to receive the income is relinquished or otherwise terminated, by whatever means. See H. Rep. No. 97-201, at 161 (1981). The property in Qualified Trust-A is a portion of the property originally held by Qualified Trust with respect to which Decedent's estate was allowed a deduction under § 2056(b)(7). Thus, for purposes of § 2519, the entry of Order on Date 3 resulted in a disposition of a qualifying income interest for life in Qualified Trust-A.

Accordingly, based on the facts submitted and representations made, we rule that Spouse is deemed to have made a transfer of all of the property in Qualified Trust-A under § 2519, other than the value of her qualifying income interest, and Spouse is deemed to have made a transfer of her qualifying income interest in Qualified Trust-A under § 2511, on Date 3 upon entry of Order approving modifications by which the income interest of Spouse in Qualified Trust-A is terminated and distributions from Qualified Trust-A are permitted to be made prior to death of Spouse.

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.

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

Sincerely,

Leslie H. Finlow

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

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: