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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-108780-24

Date:
October 25, 2024

In Re:

LEGEND

Decedent	=
Spouse	=
Child 1	=
Child 2	=
Grandchild 1	=
Grandchild 2	=
Individual	=
Trust	=
Marital Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
<u>a</u>	=
<u>b</u>	=
Charity 1	=
Charity 2	=
State 1	=
State 2	=

State 1 Court =

Statute 1 =

Statute 2 =

Dear :

This letter responds to your authorized representative's letter dated May 3, 2024, requesting income, estate, and gift tax rulings with respect to the proposed division of a trust.

The facts and representations submitted are summarized as follows:

Decedent established Trust, a revocable trust, on Date 1, and amended and restated Trust on Date 2. Trust became irrevocable upon Decedent's death on Date 3. Decedent was survived by Spouse and Spouse's children, Child 1 and Child 2.

Pursuant to Article II, Paragraph B.4. of Trust, upon Decedent's death, and after certain specific bequests, the remaining trust estate was to be divided into two separate trusts, Marital Trust and Decedent's Trust. This letter pertains to Marital Trust only. The current trustees of Marital Trust are Child 2 and Individual. Marital Trust is currently situated in, and governed by, the law of State 1.

Article II, Paragraph C. provides the terms of Marital Trust. Under Article II, Paragraph C., during Spouse's lifetime, all of the net income of Marital Trust is payable to Spouse at least quarter-annually, and principal may be paid to or applied for the benefit of Spouse as the trustees, in their discretion, consider necessary for Spouse's health, support, and maintenance. Article II, Paragraph C. provides no power to Spouse to appoint any portion of Marital Trust.

Upon Spouse's death, Article II, Paragraph C.3. provides that after payment of any taxes attributable to Marital Trust's inclusion in Spouse's estate, certain distributions are to be made prior to distribution of the remainder. First, \$a is to be distributed to Grandchild 1 and Grandchild 2 in equal shares and, if either Grandchild is not then living, then such equal share shall be distributed to that grandchild's then living issue, by right of representation. Second, \$b is to be distributed to Charity 1 and Charity 2 in equal shares. After these distributions, the residue of Marital Trust is to be distributed free of trust, one-half to each of Child 1 and Child 2, and if Child 1 or Child 2 is not then living, then such respective share is to be distributed to that child's then living issue by right of representation.

Article IV, Paragraph K. of Trust provides that the trustees are vested with specific powers with respect to the trust estate, and any part of it. Specifically, the trustees may partition, allot, and distribute the trust estate, or any division or periodic, partial or final distribution of the trust estate, in undivided interests or in kind, or partly in

money and partly in kind. The trustees are under no obligation to make a pro rata division, or to distribute the same assets to beneficiaries similarly situated, but rather the trustees may, in their discretion, make a non-pro rata division between trusts or shares and non-pro rata distributions to beneficiaries, so long as the assets allocated to the separate trusts or shares, or distributed to the beneficiaries, have equivalent or proportionate fair market values.

Article VIII, Paragraph K. provides that no interest in the principal or income of any trust or share created under Trust may be anticipated, assigned, or encumbered by any beneficiary, or subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary.

Decedent's executor elected on 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) of the Internal Revenue Code (Code). Upon the death of Spouse, the assets of Marital Trust will be included in Spouse's gross estate under § 2044 of the Code.

On Date 4, several years after the death of Decedent, Child 1 became Spouse's duly authorized agent under a durable financial power of attorney governed by the laws of State 2. As Spouse's agent, Child 1 was empowered to renounce and disclaim any property or property interest or power to which Spouse may become entitled by gift, testate succession, or intestate succession.

On Date 5, the trustees, Spouse through Child 1 in Child 1's capacity as Spouse's duly authorized agent, Child 1 in her individual capacity and on behalf of Child 1's issue, and Child 2 in her individual capacity and on behalf of Child 2's issue, as all of the interested current, presumptive remainder, and contingent remainder beneficiaries of Marital Trust under Trust, entered into an Agreement for Marital Trust (Agreement). Agreement was amended on Date 6.

Pursuant to Agreement as amended on Date 6, the trustees will divide Marital Trust into Trust 1 and Trust 2. Trust 1 will hold cash and/or securities having a fair market value on the date of division equal to an amount not to exceed the amount of Spouse's currently available unused federal gift tax exclusion under § 2505 of the Code, and Trust 2 will hold the balance of property remaining in Marital Trust after funding Trust 1. Trust 1 and Trust 2 will have the same terms as Marital Trust including the distributions to Grandchild 1, Grandchild 2, Charity 1, and Charity 2, pursuant to Article II, Paragraph C.3. upon Spouse's death.

Following the division of Marital Trust into Trust 1 and Trust 2, Spouse through Child 1 in Child 1's capacity as Spouse's duly authorized agent, will renounce and disclaim all of Spouse's interest in Trust 1. As a consequence of Spouse's disclaimer, the assets in Trust 1 will be distributed to Grandchild 1, Grandchild 2, Charity 1, and Charity 2 in accordance with Article II, Paragraph C.3. as proportionately divided

between Trust 1 and Trust 2, and the remainder of Trust 1 will be distributed to Child 1 and Child 2, outright and free of trust.

Statute 1 provides that except as otherwise provided by the terms of the trust instrument, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the combination or division does not impair the rights of any beneficiary, substantially affect the accomplishment of the purposes of the trust or trusts, or violate the rule against perpetuities applicable to the trust or trusts.

Statute 2 provides that a person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

Pursuant to Agreement, a petition was filed to approve the agreement and a notice of hearing on the petition was served on Grandchild 1, Grandchild 2, Charity 1, and Charity 2. State 1 Court issued an Order on Date 7 and an amended Order on Date 8, ratifying and approving Agreement and amendment to Agreement, contingent upon Spouse obtaining a favorable private letter ruling from the Internal Revenue Service.

You have requested the following rulings:

1. The division of Marital Trust into Trust 1 and Trust 2 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. After the division of Marital Trust into Trust 1 and Trust 2, Trust 1 and Trust 2 will continue to be QTIP trusts under § 2056(b)(7).
3. Upon Spouse's disclaimer of her interest in Trust 1, 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 all of the interests in Trust 1 other than the qualifying income interest under § 2519.
4. Spouse's disclaimer of her interest in Trust 1 will not cause any property in Trust 2 to be treated as a gift by Spouse under § 2519.
5. The value of the property in Trust 1 treated as transferred under § 2519 will not be included in Spouse's gross estate under § 2044(a) because of the application of § 2044(b)(2).
6. Spouse's disclaimer of her interest in Trust 1 will not cause her interest in Trust 2 to be valued at zero under § 2702.

RULING 1

Section 61(a)(3) of the Internal Revenue Code provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom 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) states 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.

Section 1.1001-1(h)(1) provides that the severance of a trust is not an exchange of property for other property differing materially either in kind or in extent if -- (i) an applicable state statute or the governing instrument authorizes or directs the trustee to sever the trust, and (ii) any non-pro rata funding of the separate trusts resulting from the severance whether mandatory or in the discretion of the trustee, is authorized by an applicable state statute or governing instrument.

In the present case, Marital Trust will be severed into Trust 1 and Trust 2 on a non-pro rata basis. The operating provisions of Trust 1 and Trust 2 are the same as those of Marital Trust.

Under the terms of Marital Trust, the trustees are authorized to distribute trust principal or income on a non-pro rata basis. As the proposed non-pro rata severance of Marital Trust is authorized under the terms of the trust, the non-pro rata funding of Trust 1 and Trust 2 is consistent with the criterion set forth in § 1.1001-1(h)(1)(ii) for an exchange of property for property not materially different in kind or in extent under §§ 61 and 1001.

Accordingly, based upon the facts submitted and the representations made, we conclude that 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.

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, except as limited by § 2056(b), the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that 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.

Under § 2056(b)(1), a marital deduction is not allowable for an interest in property passing to the surviving spouse that is a “terminable interest.” An interest passing to the surviving spouse is a terminable interest if it 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 and, 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 qualified terminable interest property (QTIP). Under § 2056(b)(7), qualified terminable interest property is treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property is treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1). Section 2056(b)(7)(B)(i) provides that the term “qualified terminable interest property” means 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)(B)(v) 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 and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

In this case, Spouse has a qualifying income interest in life in Marital Trust. After the division of Marital Trust into Trust 1 and Trust 2, Spouse will continue to be entitled to all the income from the property, payable annually or at more frequent intervals in the trusts. Further, no person, other than Spouse, will have a power to appoint any part of the property in the trusts to any person other than Spouse. Accordingly, Spouse will continue to have a qualifying income interest in the trusts. Based upon the facts submitted and the representations made, we conclude that after the division of Marital Trust into Trust 1 and Trust 2, Trust 1 and Trust 2 will continue to be QTIP trusts under § 2056(b)(7).

RULINGS 3 and 4

Section 2501 imposes a tax on the transfer of property by gift. Section 2511 provides that the gift 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 25.2511-2(a) of the Gift Tax Regulations 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 2518 provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for gift, estate, and generation-skipping transfer tax purposes as if the interest had never been transferred to such person.

Section 2518(b) provides that a “qualified disclaimer” means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of (A) the date on which the transfer creating the interest in the person is made, or (B) the day on which the person attains age 21; (3) the person has not accepted the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer and passes either to the decedent’s spouse or to a person other than the person making the disclaimer.

Section 2519 provides that for gift tax purposes any disposition by the surviving spouse of all or part of a qualifying income interest for life in any property for which a deduction was allowed under § 2056(b)(7) is treated as a transfer by the surviving spouse of all interests in the property other than the qualifying income interest. The transfer of the qualifying income interest of the spouse is a transfer by the spouse subject to gift tax under § 2511. Section 25.2519-1(a).

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.

In this case, the trustees will divide Marital Trust into Trust 1 and Trust 2. At the moment of division, Spouse will retain a qualifying income interest in both trusts. After the division of Marital Trust, each separate trust will be a QTIP trust under § 2056(b)(7) and the division will not be treated as a disposition under § 2519.

Spouse's disclaimer is not a qualified disclaimer for purposes of § 2518. Accordingly, based upon the facts submitted and the representations made, Spouse's disclaimer of her income interest in Trust 1 will be treated as a disposition of her qualifying income interest in Trust 1. Therefore, Spouse will make a gift of her qualifying income interest in Trust 1 under § 2511 and will make a gift of all of the interests in Trust 1 other than the qualifying income interest under § 2519.

We also conclude, based upon the facts submitted and the representations made, that Spouse's disclaimer of her interest in Trust 1 will not cause any property in Trust 2 to be treated as a gift by Spouse under § 2519.

RULING 5

Section 2044(a) provides that the value of the gross estate shall include the value of any property to which § 2044 applies in which the decedent had a qualifying income interest for life. Section 2044(b) provides that § 2044 applies to any property if (1) a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) or § 2523(f), and (2) § 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

As stated above, Spouse's disclaimer of her interest in Trust 1 will result in Spouse making a gift, under § 2519, of the entire fair market value of the assets in Trust 1, less the value of the qualifying income interest. 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. Accordingly, based upon the facts submitted and the representations made, we conclude that the value of the property in Trust 1 treated as 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 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.

In this case, Spouse will disclaim her income interest in Trust 1. We concluded above that the disclaimer will not cause any property in Trust 2 to be treated as a gift by Spouse under § 2519. Accordingly, based upon the facts submitted and the representations made, we conclude that Spouse’s disclaimer of her 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,

Leslie H. Finlow

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

Enclosure:

Copy for § 6110 purposes

cc:

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