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Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04- PLR-130161-01

Date:

March 11, 2002

Re:

LEGEND:

Decedent =
Taxpayer =
Executors =
Will =

Marital Trust =

Trustees =
Date 1 =
\$X =
Corporation =

Dear :

This letter is in response to your letter of May 23, 2001, requesting rulings on the proposed severance of the Marital Trust and the subsequent renunciation by Taxpayer of her entire interest in four of the severed trusts.

FACTS:

Decedent died testate on Date 1, survived by his spouse, Taxpayer. Article IV of Decedent's will (Will) directs that the Decedent's residuary estate is to be held in a marital trust for the benefit of Taxpayer. Section A of Article IV of the Will directs the Trustees to pay all of the net trust income quarterly to Taxpayer, and authorizes the Trustees to pay such amounts of principal to Taxpayer as the Trustees determine may be necessary for her maintenance in health and reasonable comfort, or her support in her accustomed manner of living. No person has any power to appoint any part of the Marital Trust to any person other than Taxpayer during Taxpayer's life. Upon Taxpayer's death, the remaining principal of the Marital Trust will be distributed outright to Decedent's then living descendants, per stirpes.

Section K of Article VIII of the Will provides that "[a]ny person (or his or her legal representative) at any time may irrevocably disclaim, renounce or release, in whole or in part, any interest, benefit, right, privilege or power granted to such person under [the

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Will].” Section P(13) of Article VIII of the Will authorizes the Executors and Trustees “to divide any trust into separate trusts based on the fair market value of the trust assets at the time of the division.”

It is represented that approximately 84% of the value of Decedent’s gross estate consisted of stock in Corporation, a publicly traded corporation, that passed to the Marital Trust.

On the Federal Estate Tax Return (Form 706) filed for Decedent’s estate, the executor elected under section 2056(b)(7) to treat the property passing to the Marital Trust as qualified terminable interest property (QTIP). Prior to funding the Marital Trust, the Trustees, pursuant to the authority contained in Section P(13) of Article VIII, divided the Marital Trust into five separate trusts, Trusts A, B, C, D and E. After the severance, Trusts B, C, D and E were funded with a fractional share of the property passing to the Marital Trust having an approximate value of \$X. Trust A was funded with the balance of the Marital Trust property. Each new trust has terms identical to those of the Marital Trust.

Taxpayer now proposes to renounce her entire interest in Trusts B, C, D and E. Taxpayer’s renunciations will not constitute qualified disclaimers under section 2518. After the proposed renunciations, Taxpayer will fully exercise her right of recovery under section 2207A(b). Additionally, Taxpayer’s renunciations will be conditioned upon payment by the remaindermen of Trusts B, C, D and E, respectively, of all gift tax attributable to the renunciation of her interests in those trusts.

You requested the following rulings:

1. The severance of the Marital Trust into five new trusts, Trusts A, B, C, D, and E will not adversely affect the availability of the estate tax marital deduction, the election under section 2056(b)(7)(B)(v) with respect to the Marital Trust, nor the status of the new trusts as qualified terminable interest property.
2. Upon Taxpayer’s renunciation of her interests in Trusts B, C, D and E, Taxpayer will not be deemed to have made a transfer under section 2519 of the property in Trust A.
3. Upon Taxpayer’s renunciation of her entire interest in Trusts B, C, D and E, section 2702 will not apply.
4. The transfer of property under section 2519 resulting from Taxpayer’s renunciation of her qualifying income interest for life with respect to Trusts B, C, D and E, will be a net gift.
5. Taxpayer’s renunciation of her qualifying income interest for life in Trusts B, C, D and E, conditioned on the beneficiaries and/or remaindermen of each trust paying all of the gift tax attributable to Taxpayer’s transfer of such qualifying income interest, will be treated as a net gift.

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6. No part of the property of Trusts B, C, D, and E, that the Taxpayer has proposed to renounce, will be included in Taxpayer's gross estate under section 2044(b)(2).

LAW AND ANALYSIS:

Ruling Requests 1, 2, 4, 5 and 6

Section 2056(a) provides that, for purposes of the tax imposed by section 2001, 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. Section 2056(b)(1) provides, in pertinent part, that no deduction shall be allowed under section 2056(a) 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, and on such termination, the property passes to a person other than the surviving spouse or the spouse's estate.

Section 2056(b)(7) provides an exception to the rule of section 2056(b)(1) in the case of qualified terminable interest property. Under section 2056(b)(7)(A), qualified terminable interest property is treated as passing to the surviving spouse for purposes of section 2056(a) and no part of the property is treated as passing to any person other than the surviving spouse for purposes of section 2056(b)(1).

Under Section 2056(b)(7)(B)(i), the term "qualified terminable interest property" means property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under Section 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 the surviving spouse is entitled 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 during the surviving spouse's life.

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)(2) provides that section 2044(a) applies to any property if section 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2502(c) provides that the payment of the gift tax is the liability of the donor. Section 2511 provides that the tax imposed by section 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(b) provides that, where property is transferred for less than an 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.

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Section 25.2511-2(a) provides that the gift tax is a primary and personal liability of the donor, is an excise upon the donor's 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 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 section 2519(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the donor under section 2056(b)(7).

Section 25.2519-1(c) provides that the amount treated as a transfer under section 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 section 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 section 25.2511-2.

Section 2207A(b) provides that, if for any calendar year, tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2519, such person shall be entitled to recover from the person receiving the property the amount by which (1) the total tax for such year under chapter 12 exceeds (2) the total tax which would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

Under section 25.2207A-1(a) of the Gift Tax Regulations, if an individual is treated as transferring an interest in property by reason of section 2519, the individual is entitled to recover from the "person receiving the property" the amount of gift tax attributable to that property. The value of property to which section 25.2207A-1(a) applies is the value of all interests in the property other than the qualifying income interest. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the total amount of gifts, if no federal gift tax is attributable to the property. The right of recovery arises at the time the federal gift tax is actually paid by the transferor subject to section 2519.

Section 25.2207A-1(c) provides that the amount of federal gift tax attributable to all properties includible in the total amount of gifts under section 2519 made during the calendar year is the amount by which the total federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Code that has been paid, exceeds the total federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Code that would

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have been paid if the value of the properties includible in the total amount of gifts by reason of section 2519 had not been included.

Section 25.2207A-1(d) provides that a person's right of recovery with respect to a particular property is an amount equal to the amount determined in section 25.2207A-1(c) multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the total amount of gifts made during the calendar year by reason of section 2519, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the total amount of gifts made during the calendar year by reason of section 2519, less any deductions allowed with respect to those properties.

Section 25.2207A-1(e), provides that, if the property is in trust at the time of the transfer, the "person receiving the property" is the trustee, and, if the property does not remain in trust, any person receiving the property prior to the expiration of the right of recovery.

Rev. Rul. 75-72, 1975-1 C.B. 310, holds that, if a transfer of property is conditioned on the payment by the donee of the gift tax imposed on the transfer, then in determining the amount of the gift, the amount of gift tax actually paid by the donee is deducted from the value of transferred property; that is, the gift is treated as a "net gift." Under section 2502(c), the donor is primarily liable for the payment of the gift tax. Thus, if at the time of the transfer, the gift is made subject to a condition that the gift tax be paid by the donee or out of the transferred property, the donor receives consideration for the transfer in the amount of gift tax to be paid by the donee. Accordingly, under section 2512, the value of the gift is measured by the fair market value of the property or property right or interest passing from the donor, minus the amount of the gift tax actually paid by the donee. Rev. Rul. 81-223, 1981-2 C.B. 189, holds that in determining the gift tax liability actually assumed by the donee, the donor's available unified credit must be used to reduce the tax in determining the liability.

In this case, the Marital Trust meets the requirements of section 2056(b)(7) and is eligible for the QTIP election. Under the proposed transaction, the resultant new trusts will each have terms identical to those of the Marital Trust. Accordingly, based on the facts submitted and the representations made, we rule that the division of the Marital Trust into five new Trusts A, B, C, D, and E, and the subsequent renunciation by Taxpayer of her entire interest in Trusts B, C, D, and E will not adversely affect the validity of the election under section 2056(b)(7)(B)(v) or the allowance of the estate tax marital deduction under section 2056(b)(7) with respect to all of the Marital Trust, nor the continuing qualification of Trust A as qualified terminable interest property.

Furthermore, under the proposed division of the Marital Trust, each new trust will be a separate legal entity. Accordingly, we rule that upon Taxpayer's renunciation of her interests in Trusts B, C, D, and E, Taxpayer will be treated as disposing of her qualified income interest with respect to those trusts, for purposes of section 2519. However, Taxpayer will not be deemed to have made a transfer under section 2519 of

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any portion of Trust A.

With respect to the treatment of Taxpayer's gift resulting from the application of section 2519, although section 2502(c) provides that the tax on the gift is the liability of the donor, in Rev. Rul. 75-72 and Rev. Rul. 81-223, the burden of the tax was shifted to the donees by agreement. The amount of the gift on which the gift tax was computed was reduced by the amount of the gift tax paid by the donee. As discussed above, with respect to the gift tax imposed as a result of a transfer under section 2519, section 2207(A) statutorily shifts the burden, but not the liability for paying the gift tax to the donee. Because the statute imposes the burden of paying the gift tax on the donee, the donee provides consideration for the gift. The donee's undertaking under the statute inures to the benefit of the donor because it relieves the donor of the obligation to pay gift tax that the donor is liable for and is otherwise required to pay out of the donor's own funds. See Rev. Rul. 75-72.

Accordingly, Taxpayer's gift under section 2519 is treated as a "net gift". The amount of the gift is determined by reducing the amount of the transfer under section 2519 and section 25.2519-1(c) by the amount of gift tax the Taxpayer is entitled to recover under section 2207(A).

Further, with respect to the treatment of Taxpayer's gifts resulting from the disposition of her qualifying income interests in Trusts B, C, D and E under sections 2511 and section 25.211-2, as a condition of the transfer, the donees have agreed to pay any gift tax imposed on the transfer. In accordance with Rev. Rul. 75-72, Taxpayer's transfer of her qualifying income interests will also constitute net gifts. The amount of the gifts will be determined by reducing the value of the renounced interests by the amount of gift tax paid by the donees.

Finally, we conclude that if the renunciations are executed as proposed, no part of the property of Trusts B, C, D and E will be includible in Taxpayer's gross estate under section 2044.

Ruling Request 3

Section 2702 provides special valuation rules in the case of transfers of interests in trusts. Under section 2702(a), 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 Section 2702(a)(2). Section 2702(a)(2) provides that the value of any retained interest that is not a qualified interest shall be treated as being zero. The value of any retained interest that is a qualified interest is determined under section 7520.

In this case, Trusts A, B, C, D and E will be established and funded as separate trusts. Accordingly, section 2702 will not apply in determining the gift tax consequences of Taxpayer's renunciation of her entire interest in the property of Trusts B, C, D and E.

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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(s) 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, a copy of this letter is being sent to your authorized representative. A copy of this letter must be attached to any income tax return to which it is relevant.

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.

Sincerely,
George L. Masnik
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)