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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-111089-19
Date:
October 30, 2019

RE:

LEGEND

Date 1	=
Decedent	=
Revocable Trust	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
Date 12	=
Date 13	=
Individual 1	=
Individual 2	=
Individual 3	=
Spouse	=
Marital Trust	=
Bank	=
X	=
Y	=
Z	=
Charitable Trust	=
Irrevocable Trust	=
State	=

Court 1 =
Court 2 =
Statute 1 =
Statute 2 =

Dear :

This letter responds to your authorized representative's letter of March 28, 2019, and subsequent correspondence, requesting rulings on the gift, estate, and excise tax consequences of a proposed transaction.

FACTS

The facts and representations submitted are summarized as follows:

On Date 1, Decedent created Revocable Trust, which was amended and restated on Date 2, and further amended on Date 3, Date 4, Date 5, and Date 6. Revocable Trust became irrevocable upon Decedent's death on Date 7.

Article V, Paragraph 5.1(e) of Revocable Trust, as amended, provides that upon Decedent's death, after making specific devises including gifts in further trust to Individual 1, Individual 2, and Individual 3 (collectively, Individuals' Trusts), the trustee shall distribute the entire remaining trust estate, including undistributed income, if any to Spouse to be held in further trust known as Marital Trust, as provided in Paragraph 5.1(f). If Spouse is deceased, then the trustee shall hold the remaining trust estate in trust and establish Charitable Trust. Bank is the current trustee (Trustee) of Marital Trust, Charitable Trust, and Irrevocable Trust, discussed below.

Upon the death of Individual 1, and before the entire principal of Individual 1's Trust estate has been distributed, the trustee shall distribute the trust estate then held in trust as provided in Paragraph 5.1(e), *i.e.*, to Marital Trust while Spouse is living, and if Spouse is deceased, to Charitable Trust. The provisions for Individual 2 and Individual 3 are identical.

Paragraph 5.1(f) governs Marital Trust. The trustee shall pay the entire net income from Marital Trust to Spouse annually in quarterly or more frequent installments during Spouse's lifetime and from the date of Decedent's death. In addition, the trustee shall pay to or for Spouse's benefit such sums from the principal of Marital Trust as in the sole discretion of the trustee shall be necessary or advisable from time to time for the health, maintenance, and support of Spouse. Paragraph 5.1(f)(3) specifically authorizes the personal representative of Decedent's estate to elect to have all of Marital Trust treated as qualified terminable interest property (QTIP) for federal estate tax purposes.

Upon the death of Spouse, the trustee of Marital Trust shall transfer the principal of the trust estate to or for the benefit of such members of a class consisting of Spouse's lineal

descendants, as Spouse may by Spouse's last will and testament appoint by specific reference to this power provided that such amount does not exceed x percent of the total value of the trust estate. This power shall not be exercised in favor of Spouse or Spouse's estate or Spouse's creditors or the creditors of Spouse's estate. The trustee shall hold and dispose the balance of the trust estate in Charitable Trust, as provided in Paragraph 5.2.

Paragraph 5.2 governs Charitable Trust. Under Paragraph 5.2(b), Charitable Trust is created and shall be operated exclusively for religious, charitable, scientific, literary, or educational purposes within the meaning of § 501(c)(3) of the Internal Revenue Code (Code). The trustee is to distribute the net income annually, or more frequently to such religious, charitable, educational, and scientific organizations that are qualified public charities under §§ 501(c)(3) and 509 and in such amounts as a committee may determine in its sole discretion.

Article VII, Paragraph 7.2(e) of Revocable Trust provides that the trustee of any trust created by this trust agreement shall be authorized for tax, administrative or investment purposes to: (i) divide any trust established hereunder, based upon the fair market values of the trust property at the time of division, into two or more separate trusts, the dispositive provisions of which shall, except as otherwise expressly provided here, be identical to those applicable to the trust prior to division. The trustee may divide any trust into separate trusts consisting of portions that for federal generation-skipping transfer (GST) tax purposes either have inclusion ratios of zero or one.

On Date 5, Decedent created Irrevocable Trust for the benefit of Spouse. Irrevocable Trust provides that the trustee shall pay the entire net income of the trust estate at least annually to Spouse during Spouse's life. In addition, the trustee shall pay, from the principal of the trust estate, to or for Spouse's benefit, such sums as may be required for Spouse's health, education, support, and maintenance. Spouse shall have the power to require the trustee either to make property held in Irrevocable Trust productive of income or to convert the same into productive property within a reasonable time. Irrevocable Trust provides that Decedent, as settlor, will elect to treat the property in Irrevocable Trust as QTIP that qualifies for the marital deduction by the timely filing of a federal gift tax return. Upon Spouse's death, the trustee shall distribute the trust estate (or remainder thereof) then held in trust to the trustee of Charitable Trust. Bank and Spouse were the initial co-trustees of Irrevocable Trust and, currently, Bank is the sole Trustee.

On Date 8, Decedent timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the gifts to Irrevocable Trust. On the return, Decedent elected to treat all of the property in Irrevocable Trust as QTIP under § 2523(f).

On Date 9, Trustee divided Marital Trust into GST Exempt Marital Trust and GST Non-Exempt Marital Trust. The terms of GST Exempt Marital Trust and GST Non-Exempt Marital Trust are identical to Marital Trust.

On Date 10, Bank, as executor of Decedent's estate, timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 11, Bank filed a supplemental Form 706. On the returns, Bank elected to treat all of the property in Marital Trust, as divided into GST Exempt Marital Trust and GST Non-Exempt Marital Trust, as QTIP under § 2056(b)(7).

Prior to Decedent's death, Decedent and Spouse were living apart and became estranged. After Decedent's death, Bank opened Decedent's probate estate in the probate court in State. Spouse filed a Petition for Revocation in the probate court challenging Decedent's will on grounds of lack of testamentary capacity and undue influence by the Bank. Subsequently, the parties filed actions in two circuit courts, Court 1 and Court 2. After substantial litigation, the parties entered into a Settlement Agreement, dated Date 11. The primary purpose of the Settlement Agreement is to terminate Irrevocable Trust and Marital Trust and to preserve the trust funds to meet Decedent's intent to provide for Spouse and Charitable Trust.

Under the Settlement Agreement, the parties agree to the following:

1. Spouse shall receive a principal distribution from Irrevocable Trust in the amount of \$y in consideration for her resignation as co-trustee of Irrevocable Trust and in resolution of Spouse's claims for attorney's fees, costs, demands for principal invasion, and disputed co-trustee fees.
2. Spouse shall receive from Irrevocable Trust in exchange for her income interest therein, cash equal to the present value of her lifetime income interest in Irrevocable Trust as determined under § 25.2512-5 of the Gift Tax Regulations, as of the date of termination of Irrevocable Trust based upon (i) the § 7520 interest rate then in effect, (ii) the age of Spouse at that time, and (iii) the fair market value, as reported by Bank, as Trustee, of the assets of Irrevocable Trust as of the date of termination, less any and all liabilities and accrued and unpaid expenses of administration.
3. The balance of Irrevocable Trust shall be distributed to Charitable Trust.
4. Spouse shall receive from Marital Trust in exchange for her income interest therein, cash equal to the present value of her lifetime income interest in Marital Trust as determined under § 25.2512-5 as of the date of termination of Marital Trust based upon (i) the § 7520 interest rate then in effect, (ii) the age of Spouse at that time, and (iii) the fair market value, as reported by Bank, as Trustee, of the assets of Marital Trust as of the date of termination, less any and all liabilities and accrued and unpaid expenses of administration.

5. The balance of Marital Trust shall be distributed to Charitable Trust.
6. Until the disposition of Spouse's lifetime income interests, Spouse shall receive from both Irrevocable Trust and Marital Trust a minimum income distribution of \$z, with the balance of the trust income to be paid at termination or in December of each year until termination.
7. Spouse shall disclaim, effective immediately following the termination, all of her interests in Revocable Trust and Individuals' Trusts created thereunder, causing the property remaining in such trusts upon the death of each Individual to pass to Charitable Trust and not Spouse, even if Spouse is living at that time.

Courts 1 and 2 approved the Settlement Agreement on Date 12 and 13, respectively. Except for the distribution of y to Spouse and Spouse's resignation as co-trustee, the terms of the Settlement Agreement are subject to the issuance of a favorable private letter ruling by the Internal Revenue Service.

Bank and Spouse represent that no deduction has been or will be allowed under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution, bequest, legacy, devise, or transfer to, or payment or set-aside by, Charitable Trust, made prior to the contemplated exchange.¹

Under Statute 1, a nonjudicial settlement agreement among the trustee and trust beneficiaries is valid only to the extent the terms and conditions could be properly approved by the court. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this code, including, but not limited to, terminating or modifying a trust in an impermissible manner. Any interested person may request the court to approve or disapprove a nonjudicial settlement agreement.

Statute 2 provides that a person may disclaim, in whole or in part, conditionally or unconditionally, any interest in or power over property, including a power of appointment.

You request the following rulings:

1. The entire Irrevocable Trust constitutes QTIP under § 2523(f).
2. Each of GST Exempt Marital Trust and GST Non-Exempt Marital Trust constitute QTIP under § 2056(b)(7).

¹ Bank initially claimed an erroneous charitable deduction under § 170 with respect to a nominal contribution to Charitable Trust made for the purpose of enabling Charitable Trust to be a party to the Settlement Agreement; however, Bank timely filed an amended return that did not claim a deduction under § 170.

3. The principal distribution of \$y from Irrevocable Trust to Spouse for maintenance and support does not constitute a disposition under § 2519 by Spouse for any part of her qualifying income interest in Irrevocable Trust.
4. Spouse's proposed dispositions of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust will constitute dispositions to which § 2519 applies.
5. Spouse's proposed dispositions of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust will not result in gifts by Spouse of those interests under § 2511 because Spouse will receive the present value of her qualifying income interest in each trust.
6. Spouse will receive gift tax deductions under § 2522 for any property deemed gifted by her to Charitable Trust pursuant to § 2519 upon the disposition of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust.
7. The disclaimer under State law by Spouse of her remote contingent remainder interests in Individual 1 Trust, Individual 2 Trust, and Individual 3 Trust will not result in any gifts by Spouse.
8. The property of Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust deemed transferred under § 2519 will not be includible in Spouse's gross estate under § 2044.
9. The dispositions by Spouse of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust do not constitute acts of self-dealing under § 4941.

LAW

Rulings 1 through 8

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 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 2056(a) provides that, for purposes of the tax imposed by § 2001, 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)(7)(B)(i) defines the term “qualified terminable interest property” as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) 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, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001.

Section 2501(a)(1) imposes a tax on the transfer of property by gift by an 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 2512(a) provides that if the 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 an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 25.2512-8 provides that transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate consideration in money or money's worth.

Section 2519(a) provides that for purposes of chapter 11 and chapter 12, 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), or under § 2523(f).

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)(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 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 25.2519-1(e) provides that the exercise by any person of a power to appoint qualified terminable interest property to the donee spouse is not treated as a disposition under § 2519, even though the donee spouse subsequently disposes of the appointed property.

Section 25.2519-1(g), *Example 1*, describes a situation where, under D's will, a personal residence valued for estate tax purposes at \$250,000 passes to S for life, and after S's death to D's children. D's executor made a valid election to treat the property as qualified terminable interest property. During 1995, when the fair market value of the property is \$300,000 and the value of S's life interest in the property is \$100,000, S makes a gift of S's entire interest in the property to D's children. The example concludes that pursuant to § 2519, S is treated as making a gift in the amount of

\$200,000 (*i.e.*, the fair market value of the qualified terminable interest property of \$300,000 less the fair market value of S's qualifying income interest in the property of \$100,000). In addition, under § 2511, S makes a gift of \$100,000 (*i.e.*, the fair market value of S's income interest in the property).

Section 25.2519-1(g), *Example 2*, the facts are the same as in *Example 1* except that during 1995, S sells S's income interest in the property to D's children for \$100,000. Pursuant to § 2519, S is treated as making a gift of \$200,000 (\$300,000 less \$100,000, the value of the qualifying income interest in the property). S does not make a gift of the income interest under § 2511, because the consideration received for S's income interest is equal to the value of the income interest.

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).

Section 2522(c)(1) provides that no deduction is allowed under § 2522 for a gift to or for the use of an organization or trust described in § 508(d) or § 4948(c)(4) subject to conditions specified in such sections.

Section 2523(a) provides that where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

Section 2523(b) provides, in part, that 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, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse.

Section 2523(f)(1) provides that in the case of qualified terminable interest property, for purposes of § 2523(a), such property shall be treated as transferred to the donee spouse, and for purposes of § 2523(b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

Section 2523(f)(2) provides that the term "qualified terminable interest property" means any property which is transferred by the donor spouse, in which the donee spouse has a qualifying income interest for life, and to which an election under § 2523(f)(4) applies.

Section 2523(f)(3) provides that, for purposes of this subsection, rules similar to the rules of clauses (ii), (iii), and (iv) of § 2056(b)(7)(B) shall apply.

Section 2523(f)(4)(A) provides that an election under § 2523(f) with respect to any property shall be made on or before the date prescribed by § 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to § 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe.

Section 2523(f)(4)(B) provides that an election under this subsection, once made, shall be irrevocable.

ANALYSIS

Ruling 1

In this case, the terms of Irrevocable Trust provide that Spouse is entitled to all the income from the property in the trust, at least annually, during Spouse's lifetime. Further, no person will have a power to appoint any part of the property in Irrevocable Trust to any person other than Spouse. On a timely filed Form 709, Decedent elected to treat the assets of Irrevocable Trust as QTIP under § 2523(f). Accordingly, based upon the facts submitted and the representations made, we conclude that the entire Irrevocable Trust constitutes QTIP under § 2523(f).

Ruling 2

In this case, the terms of Marital Trust, which was divided into GST Exempt Marital Trust and GST Non-Exempt Marital Trust, provide that Spouse is entitled to all the income from the property in the trust, at least annually, during Spouse's lifetime. Further, no person will have a power to appoint any part of the property in Marital Trust to any person other than Spouse. The terms of GST Exempt Marital Trust and GST Non-Exempt Marital Trust are identical to Marital Trust. Decedent's estate elected to treat the assets of Marital Trust as QTIP under § 2056(b)(7)(i). Accordingly, based upon the facts submitted and the representations made, we conclude that the entire Marital Trust, as divided into GST Exempt Marital Trust and GST Non-Exempt Marital Trust, constitutes QTIP under § 2056(b)(7)(B).

Ruling 3

Spouse and Bank, as Trustees of Marital Trust and Irrevocable Trust, have been involved in substantial and continuing litigation. Pursuant to the provisions of Irrevocable Trust, Trustee possessed the power to appoint property from Irrevocable Trust to Spouse as may be required for Spouse's health, education, support, and maintenance. Under the terms of the Settlement Agreement, Trustee will distribute to Spouse \$y, pursuant to the discretionary authority granted by Irrevocable Trust. The Courts' Orders, approving the Settlement Agreement, provide that the

distribution of principal to Spouse was authorized under the provisions of Irrevocable Trust.

As discussed above, Irrevocable Trust constitutes QTIP under § 2523(f)(2). The distribution to Spouse was made pursuant to a power to appoint QTIP to the donee spouse. See § 25.2519-1(e). Accordingly, based upon the facts submitted and the representations made, we conclude that the principal distribution of \$y from Irrevocable Trust to Spouse for maintenance and support does not constitute a disposition under § 2519 by Spouse for any part of her qualifying income interest in Irrevocable Trust.

Ruling 4

Section 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), or under § 2523(f). As discussed above, a deduction was allowed under § 2056(b)(7) for property transferred to Marital Trust and under § 2523(f) for property transferred to Irrevocable Trust. Accordingly, based on the facts submitted and the representations made, Spouse's proposed disposition of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust will constitute dispositions to which § 2519 applies.

Rulings 5 and 6

In this case, pursuant to the Settlement Agreement, Spouse will receive from Marital Trust in exchange for her income interest therein, cash equal to the present value of her lifetime interest in Marital Trust as determined under § 25.2512-5 as of the date of termination of Marital Trust based upon (i) the § 7520 interest rate then in effect, (ii) the age of Spouse at that time, and (iii) the fair market value, as reported by Bank as Trustee, of the assets of Marital Trust as of the date of termination, less any and all liabilities and accrued and unpaid expenses of administration. Accordingly, Spouse shall not transfer any portion of her income interest in the trusts. Based on the facts submitted and the representations made, Spouse's proposed disposition of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust will not result in gifts by Spouse of those interests under § 2511 because Spouse will receive the present value of her qualifying income interest in each trust.

In this case, Spouse is treated as having transferred all interests in the property held in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust, other than the qualifying income interest in each trust. Pursuant to the Settlement Agreement, these interests will be transferred to Charitable Trust. Charitable Trust will receive property equal to the full value of the respective remainder interest in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust. Assuming Charitable Trust is an organization described in § 2522(a), the transfers by

Spouse under § 2519 will qualify for the gift tax charitable deduction under § 2522(a). Accordingly, based on the facts submitted and the representations made, Spouse will receive gift tax deductions under § 2522 for any property deemed gifts by her to Charitable Trust pursuant to § 2519 upon the disposition of her qualifying income interests in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust.

Ruling 7

Individual 1, Individual 2, and Individual 3 are the life beneficiaries of a trust created for his or her benefit under Revocable Trust. Pursuant to the provisions of Settlement Agreement, Spouse will disclaim under State law her interest in the remote contingent remainder interests in each Individuals' Trusts. The proposed disclaimer provides that any remainder in each Individuals' Trusts will pass directly to Charitable Trust. In exchange for the disclaimer of Spouse's interest in the remote contingent remainder interests in each Individuals' Trust, Spouse received the agreement of Charitable Trust to the terms of the Settlement Agreement. The disclaimer was a bargained for element of Settlement Agreement, which was bona fide, at arm's length and free from any donative intent, and the consideration received by Spouse for her disclaimer was adequate and full consideration in money or money's worth. See § 25.2512-8. Settlement Agreement provides a result that is within a range of reasonable settlements, that is, the interests to be received by the parties (both as to the nature of the interests and their economic value) reflect the enforceable rights of the parties. Therefore, Spouse is not deemed to have made a gift of any interest in the remote contingent remainder interests of Individual 1 Trust, Individual 2 Trust, and Individual 3 Trust because Spouse received full and adequate consideration for Spouse's disclaimer of those interests.

Accordingly, based on the facts submitted and the representations made, the disclaimer by Spouse under State law of her remote contingent remainder interests in Individual 1 Trust, Individual 2 Trust, and Individual 3 Trust will not result in any gifts by Spouse.

Ruling 8

As stated above, the termination of Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust pursuant to the Settlement Agreement will result in Spouse making a deemed gift, under § 2519, of the entire fair market value of the assets in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust and Marital Trust, as determined on the date of the disposition, 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. Therefore, based on the facts submitted and the representations made, the property of Irrevocable Trust, GST Exempt Marital Trust, and

GST Non-Exempt Marital Trust deemed transferred under § 2519 will not be includible in Spouse's gross estate under § 2044(a) because of the application of § 2044(b)(2).

Ruling 9

Section 509(a) provides that, with certain exceptions not relevant to this analysis, for purposes of the Internal Revenue Code, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3).

Section 4941(a)(1) imposes a 10 percent tax on each act of self-dealing between a disqualified person and a private foundation, which shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing.

Section 4941(d)(1)(A) provides that "self-dealing" includes any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person.

Section 4946(a)(1) provides that for purposes of subchapter A of chapter 42, the term "disqualified person" includes, with respect to a private foundation, a person who is a substantial contributor to the foundation, and a member of the family of such a substantial contributor.

Section 4946(a)(2) provides that "substantial contributor" means a person who is described in § 507(d)(2). Section 507(d)(2)(A) provides that the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than \$ 5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

Section 4947(a)(1) provides that for purposes of § 4941 and other provisions of chapter 42 of the Code, a trust which is not exempt from taxation under § 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, shall be treated as an organization described in § 501(c)(3).

Section 53.4941(d)-1(a) of the Foundation and Similar Excise Taxes Regulations provides that the term "self-dealing" does not include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of such transaction. For example, the bargain sale of property to a private foundation is not a direct act of self-dealing if the seller becomes a disqualified person

only by reason of his becoming a substantial contributor as a result of the bargain element of the sale.

Rev. Rul. 72-243, 1972-1 C.B. 233, provides that the proceeds received by the life tenant of a trust, in consideration for the transfer of the life tenant's entire interest in the trust to the remainder beneficiary, are treated as an amount realized from the sale or exchange of a capital asset under § 1222.

The transaction pursuant to the Settlement Agreement, in which Spouse will receive the present value of her life income interests in Irrevocable Trust and Marital Trust, and Charitable Trust will receive the remaining trust assets, may be regarded in substance as an indirect exchange between Spouse and Charitable Trust similar to the one described in Rev. Rul. 72-243. Charitable Trust was not funded upon Decedent's death by Decedent, and no deduction has been or will be allowed under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 with respect to Charitable Trust prior to the contemplated exchange. Therefore, prior to the exchange, Charitable Trust is not a trust described in § 4947(a)(1).

As discussed above, Spouse will receive a gift tax deduction under § 2522 of more than \$5,000 for the property deemed transferred by her to Charitable Trust (which will exceed 2 percent of all contributions to Charitable Trust), causing Charitable Trust to be subject to § 4947(a)(1) at that time. Spouse will be a disqualified person with respect to Charitable Trust when the Settlement Agreement is executed, as a substantial contributor to Charitable Trust and as a family member of the creator of Charitable Trust. Section 53.4941(d)-1(a) provides, however, that the term "self-dealing" does not include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of such transaction. Accordingly, § 4941 will not apply to the indirect exchange between Spouse and Charitable Trust pursuant to the Settlement Agreement in which Spouse will receive the present value of her life income interest in Irrevocable Trust, GST Exempt Marital Trust, and GST Non-Exempt Marital Trust, and Charitable Trust will receive the remaining trust assets.

Based on the facts submitted and the representations made, we conclude that the indirect exchange between Spouse and Charitable Trust pursuant to the Settlement Agreement will not be treated as an act of self-dealing under § 4941.

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,

Lorraine E. Gardner

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

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