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Department of the Treasury

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CC:DOM:P&SI:4 - PLR-110218-99

Date: September 8, 1999

Re:

LEGEND:

Trust =
Trustor =
Spouse =
Trustee =
Date 1 =
 a =

We received your letter dated May 4, 1999, in which you requested rulings regarding the estate, gift and generation-skipping transfer (GST) tax consequences of an irrevocable qualified terminable interest property (QTIP) trust under §§ 2044, 2523, 2631, 2632(a)(2), and 2652 of the Internal Revenue Code.

The facts and representations submitted are as follows:

Trustor created Trust for the benefit of Spouse on Date 1 and transferred Trustor's separate property with a fair market value of \$a at the date of transfer into Trust. Trustor reported the gift on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. On the return, Trustor elected to treat Trust as qualified terminable interest property (QTIP) under § 2523(f); Trustor did not make the reverse QTIP election under § 2652(a)(3). Also, on the return, Trustor allocated \$a of Trustor's GST tax exemption to the Trust.

Trust provides that during the lifetime of Spouse, the Trustee shall distribute to Spouse in convenient installments, not less often than annually, all of the net income of Trust. The Trustee may also distribute to Spouse such sums from the principal of Trust as shall be necessary or desirable, in the discretion of the Trustee, to provide for the health, maintenance and support of Spouse, having a view to maintaining Spouse's standard of living as nearly as practicable at the level existing on Date 1. During the life of Spouse, no person has the power to appoint any part of the principal or income of Trust to any person other than Spouse.

Under the Trust, Spouse has a testamentary limited power to appoint Trust principal at his death to or among Trustor, Trustor's issue, or charities, provided that no more than 20 percent of the assets may be appointed to or among charities.

In default of Spouse's exercise of his limited power of appointment, at Spouse's death, Trust is to be divided into separate, equal trusts for the benefit of Trustor's children. If any child of Trustor has predeceased Spouse, leaving issue, that child's trust is to be divided into separate trusts for the benefit of his or her issue, per stirpes.

With respect to a trust created for a child of Trustor (or trusts created for the benefit of issue of deceased children), the Trustee may distribute so much of the income or principal as may be necessary or desirable, in the discretion of the Trustee, to provide for the health, education, maintenance and support of such beneficiary and, to the extent not so distributed to such beneficiary, the Trustee may distribute so much of the income as shall be necessary or desirable, in the discretion of the Trustee, to provide for the health, education, maintenance and support of the beneficiary's issue.

Each Trust created for a child of Trustor shall terminate at the child's death. The trust assets shall then pass in accordance with the child's testamentary limited power of appointment to or among any one or more of the Trustor's issue, surviving spouses of the Trustor's deceased issue, or charities, provided that no more than 20 percent of the assets may be appointed to the surviving spouse of Trustor's deceased issue, and no more than 20 percent of the assets may be appointed to charities. If a child of the Trustor dies without exercising his or her testamentary limited power of appointment, the assets of his or her trust will pass to the surviving issue of the child, in separate trusts, per stirpes. If the child is not survived by issue, his or her trust will pass to the surviving issue, per stirpes, of the nearest ancestor of the child who is either the Trustor or an issue of Trustor.

A trust created for a beneficiary other than a child of Trustor (e.g., the issue of a deceased child), shall be administered in the same manner as a trust for a child. In addition, the trust shall pay all of its income annually to the beneficiary once the beneficiary has reached age 21. When the beneficiary reaches age 25, his or her trust shall terminate and its assets shall be distributed to the beneficiary outright. If the beneficiary dies before age 25, the trust assets will be distributed in the same manner as in the case of a Trust created for the benefit of a child of Trustor.

Any trust created pursuant to the terms of Trust for any beneficiary shall terminate not later than 21 years after the death of the last to die of Trustor, Spouse, and all of the issue of Trustor alive on Date 1. The Trust, and any trusts created pursuant to its terms, is irrevocable and may not be altered, amended or revoked by Trustor.

The Trustee of Trust requests the following rulings:

1) The Trustor's transfers to the Trust qualify for the marital deduction for federal gift tax purposes under § 2523(a).

2) Trustor has made a valid QTIP election under § 2523(f) with respect to the property Trustor transferred to Trust.

3) At Trustor's death, no part of Trust property will be includible in Trustor's gross estate for federal estate tax purposes.

4) On the death of Spouse, Trust property will be includible in Spouse's gross estate under § 2044 and will be treated as passing from Spouse for federal estate tax purposes.

5) Spouse is the transferor of Trust property for GST tax purposes because Trustor did not make a reverse QTIP election pursuant to § 2652(a)(3) to treat such property as if an election pursuant to § 2523(f) had not been made.

6) The allocation of Trustor's GST tax exemption to the Trust is void because Trust had no GST tax potential for Trustor at the time of the allocation. Therefore, Trustor's GST tax exemption is available for allocation to other transfers.

Section 2501 imposes a tax on the transfer of property by gift. Section 25.2511-2(b) of the Gift Tax Regulations provides that a gift is complete for gift tax purposes when the donor has so parted with dominion and control over the transferred property as to leave in him no power to change its disposition, whether for his own benefit or the benefit of another.

Section 2523(a) provides that, in general, a gift tax marital deduction is allowed for the transfer of property between spouses. Pursuant to § 2523(b), this deduction is not allowed for the transfer of a life estate or other terminable interest. However, § 2523(f) allows the deduction in the case of qualified terminable interest property (QTIP).

Section 2523(f)(2) defines qualified terminable interest property as property which is transferred by the donor spouse, in which the donee spouse has a qualifying income interest for life, and to which the election under § 2523(f)(4) applies.

Pursuant to § 2523(f)(3), rules similar to the rules of § 2056(b)(7)(B)(ii), (iii), and (iv) and § 2056(b)(10) apply for purposes of § 2523(f). Therefore, a donee spouse has a qualifying income interest for life in property which is transferred by the donor spouse if the donee spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, and if no person has a power to appoint any part of the property to anyone other than the donee spouse during the donee spouse's lifetime.

The election provided under § 2523(f)(4) is to be made on or before the date prescribed for filing the gift tax return with respect to the transfer and, once made, is irrevocable.

Section 2001(a) provides that a tax is imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2044 provides that the value of the gross estate includes the value of property in which the decedent had a qualifying income interest for life and for which a deduction was allowed under § 2523(f).

Section 2601 imposes a tax on every generation-skipping transfer (GST) within the meaning of §§ 2611 through 2613.

Section 2611(a) defines the term "GST" as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a) provides that the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless-- (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Section 2612(c) provides that the term "direct skip" means a transfer, subject to the estate or gift tax, to a skip person.

Section 2613(a) provides that the term "skip person" means (1) a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor, or (2) a trust-

(A) if all interests in such trust are held by skip persons, or

(B) if-

(i) there is no person holding an interest in such trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2631(a) provides that every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a) provides that any allocation by an individual of his GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2)(i) of the GST Tax Regulations provides, in part, that an allocation of GST exemption to a trust is void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor making the allocation, at the time of the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible.

Section 2652(a)(1) provides the general rule that, in the case of property subject to the estate tax, the decedent is the transferor for GST tax purposes and, in the case of property subject to the gift tax, the donor is the transferor for GST tax purposes.

Section 2652(a)(3) provides a special election for qualified terminable interest property in the case of any trust with respect to which a deduction to the donor spouse is allowed under § 2523(f). The donor spouse may elect to treat all of the property in such trust for purposes of the GST tax as if the QTIP election had not been made. This election is referred to as the "reverse" QTIP election. The consequence of a reverse QTIP election is that the donor spouse, rather than the donee spouse, is treated as the transferor of the QTIP trust for GST purposes.

Under the terms of Trust, Spouse has a qualifying income interest for life in the property transferred by Trustor because Spouse is entitled to all of the Trust income, payable at least annually, and no person has the power to appoint any part of the Trust property to anyone except Spouse during Spouse's lifetime. Trustor elected QTIP treatment for Trust on a gift tax return which was timely filed with respect to the transfer of the property to Trust. Trust is irrevocable by its terms, and Trustor retained no power over or interest in Trust. Therefore, Trustor's transfer to Trust is a completed gift for gift tax purposes.

Accordingly, based on the facts submitted and representations made, we conclude that--

1) Trustor's transfer of property to Trust on Date 1 qualifies for the federal gift tax marital deduction under § 2523(a);

2) Trustor made a valid QTIP election under § 2523(f) with respect to the property transferred to Trust;

3) At Trustor's death, no part of the Trust property will be includible in Trustor's gross estate for federal estate tax purposes;

4) On the death of Spouse, Trust property will be includible in Spouse's gross estate under § 2044, and Trust property will be treated as passing from Spouse for federal estate tax purposes;

5) Spouse is the transferor of Trust property for GST tax purposes under § 2652(a)(3) because the property will be subject to the estate tax at his death or subject to the gift tax if he disposes of his interest in Trust during his life; and

6) The allocation of Trustor's GST tax exemption to Trust is void under § 26.2632-1(b)(2)(i) of the regulations because Trust had no GST tax potential for Trustor at the time of the allocation. Therefore, Trustor's GST tax exemption is available for allocation to other transfers.

Except as we have specifically ruled herein, we express or imply no opinion as to the federal tax consequences of this transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
Katherine A. Mellody
Senior Technician Reviewer,
Branch 4

Enclosure
Copy for section 6110 purposes
