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Washington, DC 20224

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CC:ITA:2 – PLR-125983-00
Date: March 15, 2001

LEGEND:

A =

Residence =

Trust =

Dear

This letter responds to the request for a ruling dated October 17, 2000, as supplemented by additional information submitted on January 8, 2001, and additional analysis submitted on February 12, 2001.

ISSUE

May an income tax return for A's 1996 tax year be filed now with an election to exclude gain on the sale of a principal residence under § 121 of the Internal Revenue Code, as in effect in 1996?

CONCLUSION

An income tax return for A's 1996 tax year may be filed now with an election to exclude gain on the sale of a principal residence under § 121, as in effect in 1996.

FACTS

A and her husband owned and resided at the Residence for almost 50 years until A's husband died in January 1996. In March 1996, A established the Trust and conveyed the Residence to the Trust. In November 1996, the Trust sold the Residence to a third party for an amount less than \$125,000. A was 79 years old at the time of the sale. No income tax return was filed for A for 1996. A's support came from Social Security and distributions from the Trust.

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The Trust provides that during the life of A, the Trustee shall pay to or apply for the benefit of A all of the net income from the Trust Estate. The Trust further provides that the Trustee may distribute principal for the benefit of A without the approval or consent of an adverse party. All funds distributed from the Trust during the life of A were for A's benefit.

LAW AND ANALYSIS

Section 671 provides, in part, that when a grantor is treated as the owner of a trust, the grantor shall be taxable on the income of the trust.

Section 677(a) provides, in part, that the grantor shall be treated as the owner of any portion of a trust, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed to the grantor or held or accumulated for future distribution to the grantor.

Based on the facts submitted and the representations made, we conclude that under § 677(a), the Trust was a grantor trust during the life of A. Accordingly, for federal income tax purposes, A is treated as the owner of the Residence when it was sold in 1996, and is taxable on the gain on the sale of the Residence, unless the exclusion under § 121 applies.

In 1996, § 121 allowed a taxpayer to elect a one-time exclusion of up to \$125,000 of gain on the sale of property if the taxpayer was age 55 or older, and had owned and used the property as a principal residence for three years during the five-year period ending on the date of the sale. The letter ruling request represents that A met the age, ownership, and use requirements of § 121, and that the gain on the sale of the Residence was less than \$125,000. The issue raised in the letter ruling request is whether an income tax return may be filed now for A with an election to exclude gain on the sale of the Residence, as no income tax return was filed for A for 1996.

In 1996, § 121(c) provided, in part, that the election may be made at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by chapter 1 of the Code for the taxable year in which the sale occurs. Section 121-4(b) of the Income Tax Regulations further provided, in part, that the election shall be made in a statement signed by the taxpayer and attached to the taxpayer's income tax return, when filed, for the taxable year during which the sale occurs.

Section 6511(a) provides the general rule that a claim for credit or refund of an overpayment of any tax shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

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A did not file a tax return for 1996 and has not paid any tax for that year. Therefore, the period for making a claim for credit or refund of income tax for 1996 has not expired, and an income tax return for A's 1996 tax year may be filed now with an election to exclude the gain on the sale of the Residence under § 121.

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter.

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

Sincerely,

Deputy Assistant Chief Counsel
(Income Tax & Accounting)

By _____

George Baker

Assistant to Branch Chief, Branch 2

cc: Director, Compliance, W:CP