Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
January 21, 2000

Re: Letter Ruling Request Regarding the Exclusion of Gain from the Sale of a Residence

LEGEND:

Taxpayer =

Residence =

Trust =

Date 1 =

Dear

This responds to your letter dated July 23, 1999, and your supplemental letter dated August 2, 1999, requesting a ruling on whether gain from the sale of Residence would be excluded under section 121 of the Internal Revenue Code.

FACTS

Taxpayer presently lives in an assisted living facility. Prior to Date 1, Taxpayer lived in Residence for 18 years.

Taxpayer's mother established Trust. Trust holds fee simple title to Residence. Under the provisions of Trust, Taxpayer is the income beneficiary of Trust and does not have the power to vest the trust corpus or income therefrom in any person. At Taxpayer's death, the Trust corpus vests in Taxpayer's children who are over the age of 21. The only asset of Trust is Residence and it has not generated any income for Taxpayer. The trustees plan to sell Residence and may rent it until its sale.

OWNERSHIP REQUIREMENT FOR SECTION 121 PURPOSES

Section 121(a) of the Code provides that a taxpayer's gross income will not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more. Rental of the property during the 5-year period does not prevent the exclusion of gain as long as the ownership and use requirements of section 121(a) are satisfied.

Section 121(b)(1) of the Code provides that the amount of gain excluded from gross income under section 121(a) with respect to any sale or exchange will not exceed $250,000 ($500,000 for certain joint returns, see section 121(b)(2)).

Rev. Rul. 66-159, 1966-1 C.B. 162, considers whether the gain realized from the sale of trust property used by the grantor as the grantor's principal residence qualifies for the deferment and rollover of gain into a replacement residence under section 1034 of the Code. The ruling holds that because the grantor is treated as the owner of the entire trust under sections 676 and 671 of the Code, the sale by the trust will be treated for federal income tax purposes as if made by the grantor.

Rev. Rul. 85-45, 1985-1 C.B. 183, considers whether gain realized from the sale of trust property used by a beneficiary of a trust as the beneficiary's residence qualifies for the one-time exclusion of gain from the sale of a residence under section 121 of the Code. The ruling holds that because the beneficiary is treated as the owner of the entire trust under sections 678 and 671 of the Code, the sale by the trust will be treated for federal income tax purposes as if made by the beneficiary.

OWNERSHIP OF TRUST PROPERTY FOR INCOME TAX PURPOSES

Section 671 of the Code provides the general rule that when the grantor or another person is treated as the owner of any portion of a trust, there will then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account in computing taxable income or credits against the tax of an individual.

Section 678(a) of the Code provides that a person other than the grantor will be treated as the owner of any portion of a trust with respect to which (1) the person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and, after the release or modification, retains such control as would, within the principles of sections 671 through 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Because Taxpayer has never had the power to vest the trust corpus or income therefrom in herself, sections 671 and 678 are inapplicable and Taxpayer is not

considered the owner of Residence for federal income tax purposes.

Based on the facts as represented and the relevant law as set forth above, we conclude that Taxpayer is not to be considered the owner of any portion of the Trust under sections 671 through 678 of the Code. Therefore, Taxpayer is not considered the owner of Residence for purposes of satisfying the ownership requirements of section 121 of the Code.

Except as specifically ruled upon above, no opinion is expressed or implied regarding the income tax consequences of the Trust, any transaction, or any 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.

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,

/s/ David B. Auclair
Senior Technician Reviewer, Branch 1
Office of Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
Copy of this letter
Copy of section 6110 purposes

cc: