Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
March 3, 2000

Legend:

Taxpayer -
Spouse -
Trust -
Foundation -
Charitable Remainder Unitrust A -
Charitable Remainder Unitrust B -

Charitable Remainder Unitrust C -
Child A -
Child B -
Child C -
Date -

Dear :

This is in reply to the letter from your authorized representative dated January 28, 2000, and prior correspondence requesting a ruling concerning the gift tax treatment of a proposed non-qualified disclaimer of an income interest in a qualified terminable interest property trust.

The facts and representations submitted are as follows:

Spouse died testate on Date, survived by Taxpayer and three children: Child A, Child B, and Child C. Spouse's will provided that the residue of her estate pass to Trust, a testamentary trust created under the terms of Spouse's will. Under the terms of Trust, the trustee is to distribute the net income to Taxpayer at least quarter-annually for Taxpayer's life. The trustee also has the discretion to make distributions of corpus

to Taxpayer based on Taxpayer's needs for health, support and maintenance. The Trust provides that, upon Taxpayer's death, any accrued income will be distributed to Taxpayer's estate and the remaining trust estate will be distributed as follows:

> (1) certain specified corporate stock or the proceeds that are traceable from the sale or other disposition of the stock will be distributed (i) 49 percent to Foundation and (ii) 51 percent, divided equally, among three charitable remainder unitrusts previously established by Taxpayer and Spouse: Charitable Remainder Unitrust A, Charitable Remainder Unitrust B, and Charitable Remainder Unitrust C, of which the non-charitable beneficiaries are Child A and his children, Child B and his children, and Child C, respectively, and
>
> (2) the remaining trust estate will be divided equally among Child A, Child B, and Child C. If a child predeceases Spouse, that child's share is to be distributed to the charitable remainder unitrust named for the child.

The executor of Spouse's estate made a timely election under § 2056(b)(7)(B)(v) to treat Trust as a qualified terminable interest property (QTIP) trust described under § 2056(b)(7) of the Internal Revenue Code for purposes of the estate tax marital deduction. You represent that Trust was funded primarily with corporate stock specified in Spouse's will. Thus, upon Taxpayer's death, a significant portion of the Trust corpus will be distributed to the charitable remainder unitrusts and the Foundation, while a lesser portion will be distributed equally among Child A, Child B, and Child C. You further represent that Foundation is an organization exempt from Federal income tax under § 501(c)(3) and the three charitable trusts are charitable remainder unitrusts described in § 664(d)(2) and (3).

Taxpayer, a resident of Texas, proposes to execute an irrevocable disclaimer of his entire interest in Trust income and corpus. The disclaimer will not be a qualified disclaimer under § 2518 and, thus, will be subject to federal gift tax.

In accordance with § 2207A, Spouse will exercise his right of recovery to have the gift tax attributable to the transfer under § 2519 paid by the person receiving the property (as defined in § 25.2207A-1(d)). In addition, the trustee of Trust will agree to pay the gift tax attributable to Spouse's relinquishment of his interest in Trust under § 2511.

You request a ruling that, in determining the value of the gifts made by Taxpayer under §§ 2511 and 2519, the amount of the gifts is reduced by the amount of the Federal gift tax paid by the trustee of Trust and the persons receiving the property.

Section 2501 imposes a tax on the transfer of property by gift by an individual, and § 2502(c) provides that the payment of the gift tax is the liability of the donor. Section 2511 provides 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 2512(b) provides that, where property is transferred for less than 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.

Section 2519 provides that any disposition of all or a part of a qualifying income interest for life in property for which an election has been made under § 2056(b)(7), is treated as the transfer of all interests in the property other than the qualifying income interest.

Section 2207A(b) provides that if a gift tax is paid with respect to any person because of a transfer made by that person under § 2519, then that person shall be entitled to recover the tax attributable to the transfer from the person receiving the property.

Under § 25.2207A-1(a), if an individual is treated as transferring an interest in property by reason of § 2519, the individual is entitled to recover from the "person receiving the property" the amount of gift tax attributable to that property. Under § 25.2207A-1(d), 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.

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 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 § 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 25.2511-2(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.

Rev. Rul. 75-72, 1975-1 C.B. 310, holds that gift tax imposed on a transfer that is paid by the donee may be deducted from the value of the transferred property in determining the amount of the gift, if it is established that the payment of the tax by the donee or from the property itself is a condition of the transfer. If, at the time of the transfer, the gift is made subject to a condition that the gift tax is to be paid by the

donee or out of the transferred property, then the donor receives consideration for the transfer in the amount of the gift tax to be paid by the donee. Thus, under § 2512(b), the value of the gift is measured by the fair market value of the property passing from the donor minus the amount of the gift tax to be paid by the donee or from the property itself.

Rev. Rul. 81-223, 1981-2 C.B. 189, holds that, in determining the amount of the gift, the gift tax liability assumed by the donee may be deducted from the value of the transferred property, if the payment of the tax by the donee is a condition of the transfer. The donor's available unified credit must be used to reduce the tax liability that the donee has assumed to the extent the unified credit is available.

Rev. Rul. 80-111, 1980-1 C.B. 209, considers a situation where a state gift tax that was paid by the donee was, under state law, a liability of the donee to the extent of one-half of the tax. The ruling holds that the donee's payment of the one-half of the state gift tax that the donee was liable for did not constitute consideration for the transfer. The payment satisfied the donee's liability and did not in any way benefit the donor. Only the one-half of the gift tax that the donor was liable for but that was paid by the donee was consideration for the transfer and could be deducted from the value of the gift in determining the amount of the gift.

Although § 2502(c) provides that the tax on a 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 gift tax paid by the donees.

In the present case, because Taxpayer’s disclaimer is not a qualified disclaimer under § 2518, Taxpayer’s relinquishment of the income interest is a gift by Taxpayer of the value of that interest under § 2511. Under § 2502(c), the payment of the tax is the liability of the Taxpayer. However, a condition of the Taxpayer’s transfer is the agreement that the gift tax will be paid by the trustees of the Trust. Consequently, under § 2512(b), the value of the gift of Taxpayer’s income interest is measured by the fair market value of the income interest minus the amount of gift tax to be paid.

In addition, Taxpayer’s relinquishment of his income interest constitutes a disposition of Taxpayer’s income interest under § 2519. The amount of the gift made by the Taxpayer under § 2519 will be the value of the corpus of Trust less the value of Taxpayer’s qualifying income interest, reduced by the amount of the gift tax paid by the person receiving the property under § 2207A.

A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters.

The ruling contained in this letter is based upon information and representations

submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the 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.

Except as specifically set forth above, no opinion is expressed concerning the Federal tax consequences of the facts described above under the cited provisions or any other provision of the Code. We are specifically not ruling on the effect of the Taxpayer's renunciation on the termination of the Trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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 6110 purposes