**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
ID No.
Telephone Number:

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Date:
May 30, 2012

Re: Letter Ruling Request for

Legend

Grantor
Trust 1
Trust 2
Date 1
Year 1
Court
State
Case 1
Case 2

Dear :

This letter responds to a letter dated December 5, 2011, from your authorized representative, requesting rulings under § 2511 of the Internal Revenue Code concerning a reformation of a transfer in trust.

Facts

On Date 1, in Year 1, Grantor created a trust intended to qualify as a personal residence trust (QPRT) (Trust 1) under § 25.2702-5(c) of the Gift Tax Regulations. On the same date, Grantor's spouse (Spouse) also created a QPRT (Trust 2). At the time of the creation of the two trusts, Grantor and Spouse jointly owned their personal residence, Residence. On Date 1, Grantor executed a deed intending to transfer his interest in Residence to Trust 1 and Spouse executed a deed intending to transfer her interest in Residence to Trust 2.

Both Grantor and Spouse filed their respective Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for the Year 1 gifts to the Trusts.

In a recent review of Grantor's estate plan, it was determined that there was a scrivener's error, the deed transferring Grantor's interest in Residence to Trust 1 mistakenly transferred the interest to Trust 2. Grantor proposes to correct this error by filing a civil action in State. The Grantor will ask the appropriate court, Court, to reform the deed on the ground of mutual mistake.

The Grantor requests the following rulings:

1. The Grantor's erroneously naming Trust 2 as the grantee of the deed did not result in a completed gift.

2. If Court reforms the deed changing the reference in the deed from Trust 2 to Trust 1, then Grantor has made a completed gift to Trust 1 as of Date 1.

Law and Analysis:

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the gift tax 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 25.2511-2(b) provides, in part, that a gift is complete where the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another.

Section 25.2511-2(c) provides, in part, that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title to the property in himself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interest of the beneficiaries as between themselves.

The Supreme Court of State in Case 1, stated:

> Before a court of equity will reform a solemn instrument, it must be shown by evidence which is the most clear and convincing, not simply it was a mistake on the part of one of the parties, but that it was a mutual mistake; that both parties intended a certain thing, and that by mistake in the drafting of the paper did not get what both parties intended. Case 1 (Citations omitted).

The Supreme Court in Case 2 states that when a court orders the reformation of a deed, the reformed deed necessarily speaks as of the date of its original execution.

In Touche v. Commissioner, 58 T.C. 565 (1972), a transfer pursuant to an erroneous deed was an incomplete gift where state law permitted the grantor to reform the deed as a result of a mistake of fact or law. See also Dodge v. United State, 413 F.2d 1239 (5th Cir. 1969).

In this case, Grantor proposes to ask Court for reformation of the deed in order to correct a mistake designating the wrong trust as grantee of the deed. The facts support the conclusion that the original deed did not reflect the true intent of the parties and that the errors were due to scrivener's error.

Therefore, based upon the facts submitted and the representations made, if Court reforms the deed as proposed, we conclude that the transfer to Trust 1 will be a completed gift for federal gift tax purposes as of Date 1, the date of the execution of the original deed and that Grantor did not make a gift to Trust 2.

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.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the 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) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Lorraine Gardner
Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes

cc: