

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04

PLR-166164-04

Date: FEBRUARY 23, 2006

LEGEND:

Grantor =
Property =

Parcel =
Date 1 =
a =
b =
c =
d =
e =
f =
g =
h =
i =
i =

Dear :

This is in response to your December 23, 2004, letter and other correspondence requesting a ruling that Parcel meets the requirements of a personal residence under section 25.2702-5(c)(2) of the Gift Tax Regulations.

The facts submitted are as follows:

Grantor owns fee simple title to Property. Property has been used exclusively as Grantor's second residence since Date 1. While Grantor does allow guests to vacation in the guest house located on Property, neither Property nor any structure on Property

is rented out for commercial purposes. No individual other than Grantor has the right to use or occupy Property. Property consists of approximately a acres of land and is assessed as b separate units for real property tax purposes.

Grantor proposes to subdivide one of the b separate units into c parcels. Grantor proposes to transfer Parcel, one of the c parcels, resulting from the subdivision, to Trust. Trust is intended to qualify as a Qualified Personal Residence Trust (QPRT) as described in section 25.2702-5(c).

Parcel consists of approximately d acres of land. The residence located on Parcel, is a five bedroom house with a footprint of approximately e square feet, a second floor of approximately f square feet, has five bathrooms and a partially unfinished basement of approximately g square feet. In addition to the residence, the following structures are located on Parcel: (1) 3-car detached garage of approximately h square feet; (2) an artist studio of approximately i square feet with no bedrooms or kitchen; and (3) a bunk house which is an unheated structure of approximately j square feet with two bedrooms, one bathroom, a small common area, and no kitchen.

LAW AND ANALYSIS

Section 2702(a)(1) provides that solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in section 2702(a)(2).

Section 2702(a)(2) provides that the value of any retained interest that is not a qualified interest is treated as being zero. The value of any retained interest that is a qualified interest is determined under section 7520.

Section 2702(a)(3)(A)(ii) provides that section 2702(a) shall not apply to any transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

Section 25.2702-5(a)(1) provides, in part, that section 2702 does not apply to a transfer in trust meeting the requirements of that section. A transfer in trust meets the requirements of the section only if the trust is a personal residence trust as defined in section 25.2702-5(b). A trust meeting the requirements of a "qualified personal residence trust" as defined in section 25.2702-5(c) is treated as a personal residence trust.

Section 25.2702-5(c)(1) provides that for purposes of section 2702(a)(3)(A)(ii), a qualified personal residence trust is a trust meeting all the requirements of the section. These requirements must be met by provisions in the governing instrument, and these

governing instrument provisions must by their terms continue in effect during the existence of any term interest in the trust.

Section 25.2702-5(c)(5) provides that, in general, except as otherwise provided in sections 25.2702-5(c)(5)(ii) and (c)(8), the governing instrument of a qualified personal residence trust must prohibit the trust from holding, for the entire term of the trust, any asset other than one residence to be used or held for use (within the meaning of section 25.2702-5(c)(7)(i)) as a personal residence of the term holder. Under section 25.2702-5(c)(5)(ii), the trust may hold certain assets listed in that section in addition to the personal residence.

Section 25.2702-5(c)(2)(i) provides that a personal residence of a term holder is either the principal residence of the term holder (within the meaning of section 1034), one other residence of the term holder (within the meaning of section 280A(d)(1) but without regard to section 280A(d)(2)), or an undivided fractional interest in either.

Section 25.2702-5(c)(2)(ii) provides that a personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

Section 25.2702-5(c)(2)(iii) provides that a residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services in connection with the provision of lodging (e.g., a hotel or a bed and breakfast). A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence.

In this case, based on the facts submitted and the representations made, the size of Parcel is comparable to that of properties in proximity to Parcel used for residential purposes. Accordingly, for purposes of section 25.2702-5(c)(2)(ii), Parcel includes adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location). In addition, the residence and appurtenant structures located on Parcel satisfy the primary use requirements of section 25.2702-5(c)(2)(iii). We conclude that Parcel is a personal residence within the meaning of section 2702(a)(3)(A)(ii) and section 25.2702-5(c)(2).

Section 4.01(51) of Rev. Proc. 2006-3, 2006-1 I.R.B. 122, 129, provides that rulings will not ordinarily be issued on whether a trust with one term holder satisfies the requirements of section 2702(a)(3)(A) and section 25.2702-5(c) to be a QPRT. Rev. Proc. 2003-42, 2003-1 C.B. 993, provides sample trust provisions for QPRTs. By following the sample trust provisions, taxpayers can be assured that the Service will recognize a trust as meeting all of the requirements of section 2702(a)(3)(A) and section

25.2702-5(c) if the trust (1) operates consistently with the terms of the trust instrument and (2) is a valid trust under local law.

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

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

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.

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

Sincerely yours,

George Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes