

Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Re:

Refer Reply To:

CC:PSI:B09

PLR-159486-04

Date:

May 13, 2005

LEGEND

Date 1 =

Taxpayer =

Husband =

Date 2 =

Federal Court =

Date 3 =

Trust =

Individual #1 =

State =

Citation #1 =

Citation #2 =

Citation #3 =

Dear :

This is in response to your authorized representative's letter dated November 10, 2004, requesting rulings regarding the federal gift tax consequences of a proposed transaction.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer's husband (Husband) was killed. On Date 2, Taxpayer filed claims for wrongful death in Federal Court.

On Date 3, Taxpayer created Trust, an irrevocable trust for the benefit of Taxpayer's children and more remote descendants. The current trustee of Trust is Individual #1.

Article Ninth, Paragraph B of the trust instrument prohibits Taxpayer from serving as a trustee. In addition, the trust instrument requires that at all times there shall be at

least one independent trustee. An independent trustee is defined as a trustee who has no present or future beneficial interest in the trust, does not owe a duty of support to any person having such an interest, and is neither the transferor of any property held in trust nor a related or subordinate party (as defined in § 672(c)) with respect to any transferor.

Article Twelfth provides that Trust is irrevocable. Trust may be amended by an instrument executed by all of the independent trustees but only to the extent that any purported amendment: (a) clarifies the meaning of any provision so as to avoid the necessity of instructions by a court, (b) alters or adds to the administrative power of the trustee for the better accomplishment of the purposes of the trust, or (c) alters or adds to the instrument so that its provisions are in better conformity with relevant provisions of federal and state tax laws. The trust instrument may not be altered or added to in any manner as to add to the beneficiaries or classes of beneficiaries.

Taxpayer proposes to irrevocably assign part or all of the potential proceeds of the wrongful death action, or the proceeds from the settlement of the action, to Trust by executing an assignment agreement. Consequently, Taxpayer requests a ruling that her proposed assignment of potential proceeds from the judgment or settlement of the cause of action to Trust constitutes a completed gift at the time of the assignment.

Section 2501 imposes a tax on the transfer of property by gift by any individual.

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(a) provides that if a gift is made in property, the value of thereof at the date of the gift shall be considered the amount of the gift.

Section 25.2511-1(a) of the Gift Tax Regulations provides that the gift tax applies to every kind of transfer by way of gift, whether direct or indirect, and whether the property is real or personal, tangible or intangible. For this purpose, the term property is used in its broadest and most comprehensive sense and reaches "every species of right or interest protected by law and having an exchangeable value." H.R.Rep. No. 708, 72d Cong., 1st Sess. 27 (1932); S.Rep. No. 665, 72d Cong., 1st Sess. 39, (1932); both reprinted in 1939-1 (Part 2) C.B. 476, 524. Some rights, however, are not property. See e.g., *Estate of Howell v. Commissioner*, 15 T.C. 224 (1950) (nonvested pension rights were not property rights includible in gross estate under § 811(c) of the 1939 Code); *Estate of Barr v. Commissioner*, 40 T.C. 227 (1963) acq., 1964-1 C.B. 4 (death benefits payable at discretion of board of directors who usually but not always, agreed to payment, were in the nature of hope or expectancy and not property rights includible in gross estate for estate tax purposes).

Section 25.2511-2(a) provides that the gift tax is not imposed upon the receipt of the property by the donee, nor is it necessarily determined by the measure of

enrichment resulting to the donee at the time of the transfer. The tax is a primary and personal liability of the donor, is an excise upon the act of making the transfer, is measured by the value of the property passing from the donor, and attaches at the time the property passes, regardless of the fact that the identity of the donee may not then be known or ascertainable.

Under § 25.2511-2(b), generally, a gift is complete and subject to the gift tax when the donor has so parted with dominion and control over the property as to leave the donor no power to change its disposition, whether for the donor's own benefit or for the benefit of another.

In Rev. Rul. 80-186, 1980-2 C.B. 280, a parent transferred to a child, for nominal consideration, an option to purchase real property for a specified period of time at a price below fair value. Rev. Rul. 80-186 holds that the transfer is a completed gift at the time the option is transferred provided the option is binding and enforceable under state law on the date of the transfer.

Under State law, the potential proceeds of a judgment or settlement from a cause of action are recognized as a property interest that can be equitably assigned by one party to another. Citation #1; Citation #2; Citation #3.

In the present case, Taxpayer proposes to assign a portion of the potential proceeds from a wrongful death action to Trust. Trust is irrevocable and the provisions may be amended only under very limited circumstances. The trust instrument may not be modified in any manner that would alter the interest of any beneficiary. In addition, under the terms of Trust, Taxpayer is expressly prohibited from serving as a trustee. Following the assignment of a portion of Taxpayer's interest in the proceeds to Trust, Taxpayer will remain the named party in the claim and will continue to have direct responsibility for directing legal representation and making settlement decisions. Notwithstanding Taxpayer's continued involvement in the administrative aspects of the claim, Taxpayer will have no means to reacquire the economic benefit of the assigned proceeds or to change any of the interests created under Trust. Accordingly, when Taxpayer assigns a portion of the potential proceeds of the cause of action to Trust, she will have parted with dominion and control over the proceeds.

In addition, as noted above, the potential proceeds of a wrongful death action are recognized as an interest in property under State law. Further, State law permits the assignment of potential proceeds of a wrongful death action from one party to another.

Based on the foregoing, we conclude that Taxpayer's proposed assignment of a portion of the potential proceeds from the cause of action to Trust will constitute a completed gift at the time of the assignment. We express no opinion on the value, for gift tax purposes, of the potential proceeds at the time of the assignment.

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.

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.

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

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,

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosure

Copy for 6110 purposes

cc: