

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

January 25, 2001

LEGEND:

Property =

Taxpayer =

Trust =

a =

b =

Date =

Month 1 =

Month 2 =

Dear Madam:

We received your letter, dated August 1, 2000, requesting a ruling that Property meets the requirements of a personal residence under § 2702 of the Internal Revenue Code and § 25.2702-5(c)(2)(i)(B) of the Gift Tax Regulations. This letter responds to your request.

The facts and representations submitted are summarized as follows: Taxpayer proposes to create Trust. The terms of Trust are intended to satisfy the requirements for a qualified personal residence trust found in § 25.2702-5(c). Taxpayer proposes to transfer his entire interest in Property to Trust.

Property consists of a square feet of land. Property is improved by a residence consisting of approximately b square feet of living space that Taxpayer uses as a vacation home. Property is assessed as a single lot for property tax purposes. Other

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residential properties in the area are of a similar nature and generally consist of greater acreage than Property.

Taxpayer inherited Property on Date and has used Property as his vacation home since that date. Taxpayer leases Property for fair market rent on a short-term basis during Month 1 and Month 2. Taxpayer provides no services in connection with the rental of Property. Taxpayer represents that Taxpayer's annual personal use of Property exceeds the greater of (i) fourteen days or (ii) ten percent of the number of days Property is leased.

Article Fifth, paragraph B of Trust provides that except as otherwise provided in the following paragraphs of Article Fifth, the trustee may not hold any asset other than one residence to be used or held for use as a personal residence of Taxpayer. For purposes of this instrument, a residence shall be considered to be held for use as a personal residence of Taxpayer as long as the residence is not occupied by any other person (other than a dependent of Taxpayer) and is available at all times for use by Taxpayer as a personal residence.

Article Fifth, paragraph H provides that this trust shall cease to be a qualified personal residence trust with respect to Property if Property ceases to be used or held for use as a personal residence of Taxpayer.

You have requested a ruling that Property constitutes a personal residence within the meaning of §§ 2702 and 25.2702-5(c)(2)(i)(B).

Section 2702(a)(1) provides 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 § 2701(e)(2)) shall be determined as provided in § 2702(a)(2).

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

Section 2702(a)(3)(A)(ii) provides that § 2702(a)(2) shall not apply to any transfer if such transfer involves the 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) of the Gift Tax Regulations provides, in part, that § 2702 does not apply to a transfer in trust meeting the requirements of this section. A transfer in trust meets the requirements of this section only if the trust is a personal residence trust (as defined in paragraph (b) of this section). A trust meeting the requirements of a qualified personal residence trust (as defined in paragraph (c) of this section) is treated as a personal residence trust.

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Section 25.2702-5(c)(1) provides that a qualified personal residence trust is a trust meeting all the requirements of § 25.2702-5(c). 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)(2)(i) provides that for the purposes of § 25.2702-5(c), a personal residence of a term holder is either (A) the principal residence of the term holder (within the meaning of § 1034); (B) one other residence of the term holder (within the meaning of § 280A(d)(1) but without regard to § 280A(d)(2)); or (C) an undivided fractional interest in either.

Section 280A(d)(1) provides that a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of (A) fourteen days, or (B) ten percent of the number of days during such year for which such unit is rented at a fair rental.

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 (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 a residence.

Section 25.2702-5(c)(7)(i) provides that the governing instrument must provide that a trust ceases to be a qualified personal residence trust if the residence ceases to be used or held for use as a personal residence of the term holder. A residence is held for use as a personal residence of the term holder so long as the residence is not occupied by any other person (other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence.

Section 25.2702-5(d), Example 2, states that L owns a vacation condominium that L rents out for six months of the year, but which is treated as L's residence under § 280A(d)(1) because L occupies it for at least 18 days per year. L provides no substantial services in connection with the rental of the condominium. L transfers the condominium to an irrevocable trust, the terms of which meet the requirements of a qualified personal residence trust. L retains the right to use the condominium during L's lifetime. The trust is a qualified personal residence trust.

In this case, Taxpayer represents that he uses Property as his vacation home and that his annual personal use of Property exceeds the greater of (i) fourteen days or (ii) ten percent of the number of days Property is leased. Such use satisfies the requirement, under § 25.2702-5(c)(2)(i)(B), of one other residence of the term holder in which the term holder's use exceeds the greater of fourteen days or ten percent of the number of days during such year for which such unit is rented at a fair rental. See

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§ 25.2702-5(d), Example 2. The provisions of Trust satisfy the requirements of § 25.2702-5(c)(7)(i) and rental of the residence for two months of the year will not violate the requirements under § 25.2702-5(c)(2)(iii), as long as the primary use of Property continues to be as a residence. Taxpayer further represents that he provides no services in connection with the rental of Property. Accordingly, based on the facts and representations submitted, we conclude that Property is a personal residence within the meaning of § 2702(a)(3)(A)(ii) and § 25.2702-5(c)(2). Except as specifically ruled herein, we express no opinion regarding whether Trust will meet the requirements for a qualified personal residence trust under § 25.2702-5(c).

This ruling is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

A copy of this letter should be attached to any gift, estate or generation-skipping transfer tax returns that you may file relating to this matter. A copy is enclosed for that purpose. Except as specifically ruled herein, we express or imply 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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Lorraine E. Gardner
Assistant to the Branch Chief, Branch 9
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of this letter
Copy for section 6110 purposes