

Internal Revenue Service

Number: **201901003**

Release Date: 1/4/2019

Index Number: 1041.01-00, 2516.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-112463-18

Date:

September 04, 2018

TY:

Legend

A =

B =

Property =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Court =

Stipulation and Order 1 =

Stipulation and Order 2 =

Net Purchase Price =

X =

Y =

Z =

Dear :

This letter is in reply to your letter requesting a private letter ruling, dated April 5, 2018, on the proper treatment of the disposition of an interest in real property between divorced spouses under §§ 1041 and 2516 of the Internal Revenue Code (Code)

You have requested the following rulings:

1. The payment by A to B of the Net Purchase Price and the transfer of interest from B to A constitutes transfers between former spouses that are 'incident to divorce' under § 1041 of the Code.

2. The payment by A to B of the Net Purchase Price and the corresponding transfer by B to A of B's 50% interest in the Property constitutes transfers 'for full and adequate consideration in money or money's worth' under § 2516 of the Code.

FACTS

On Date 1, A and B were divorced upon the entry of a final decree of divorce. Less than seven months later, on Date 2, Court entered Stipulation and Order 1, a court order putting into effect an agreement reached by A and B to reconcile their respective property rights.

Under the terms of Stipulation and Order 1, A and B stipulated that they would hold equal interests in the Property as tenants in common, and each would be responsible for payment of an equal share of the mortgage, taxes, homeowner's insurance, utilities, homeowner's association fees, and similar expenses. Improvements, repairs or changes to the structure or décor of the Property would require the consent of both A and B before undertaking such repairs or changes, and the costs of these would be shared equally by A and B. If A or B desired to sell his or her interest, he or she would give written notice to the other owner to begin a 60-day period during which the owner receiving notice could purchase the interest of the owner giving notice. Stipulation and Order 1 specified a purchase price of 50 percent of "gross equity" at the time of notice. Stipulation and Order 1 defined "gross equity" as the current fair market value as established by a professional appraisal minus the then current payoff figure on the mortgage. If the owner receiving notice did not timely elect to exercise the option and consummate the purchase, then Property would be listed for sale to a third person. The personalty located in Property would be divided by mutual agreement at the time of a buyout or sale of Property to a third party.

On Date 3, Property sustained heavy smoke and water damage during a fire at an adjoining home. As a result, Property required repairs well in excess of the repairs contemplated by A and B when they agreed to Stipulation and Order 1. In addition, Stipulation and Order 1 did not have a provision for resolving disagreements such as those that arose when A and B, communicating through their attorneys, attempted to obtain consent to repairs before repairs were undertaken. Consequently, in order for the necessary repairs to be undertaken and ultimate ownership of Property to be determined, A, the party with the greater ability to handle unforeseen expenses, made disproportional contributions to pay the costs of repairs not covered by insurance.

Following the completion of the repairs to Property, A and B negotiated a buyout of B's interest in Property consistent with the provisions of Stipulation and Order 1. Because A and B wished to ensure that their buyout agreement did not violate the terms

of Stipulation and Order 1, A petitioned Court to re-open the divorce case so that A and B could enter a new stipulation with revised terms. On Date 4, Court entered Stipulation and Order 2, a new court order to resolve the ultimate ownership of Property. In Stipulation and Order 2, A and B stipulated that each had obtained an independent appraisal of the fair market value of Property as a furnished unit, that the fair market value of Property is x , and that the fair market value of B's undivided one-half interest in Property is $\frac{1}{2}x$. In addition, A and B stipulated that A had paid y and B had paid z in costs related to maintenance, upkeep, remediation and repair of Property (including payoff of the mortgage). Finally, A and B stipulated that A would deliver to B the Net Purchase Price, an amount equal to $\frac{1}{2}x$ less $[(y \text{ minus } z) \text{ divided by } 2]$, and B would deliver to A a deed for Property and a bill of sale for personalty located in Property. A and B carried out these transfers in accordance with Stipulation and Order 2.

LAW AND ANALYSIS

Ruling 1

Section 1041(a) of the Code provides that no gain or loss is recognized on a transfer of property from an individual to (1) a spouse, or (2) a former spouse if the transfer is incident to a divorce. The effect of section 1041 is to defer the tax consequences (recognition of gain or loss) until the transferee disposes of the property.

Section 1041(b) of the Code provides that in the case of any transfer to which section 1041(a) applies, the property is treated as acquired by the transferee by gift for Federal income tax purposes, and the basis of the transferee in the property is adjusted basis of the transferor.

Section 1.1041-1T(b), Q&A 7, of the Income Tax Regulations provides that a transfer of property is treated as related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, as defined in section 71(b)(2) of the Code, and the transfer occurs not more than 6 years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument. Any transfer not pursuant to a divorce or separation instrument and any transfer occurring more than 6 years after the cessation of the marriage are presumed to be not related to the cessation of the marriage. This presumption may be rebutted only by showing that the transfer was made to effect the division of property owned by the former spouses at the time of the cessation of the marriage. For example, the presumption may be rebutted by showing that (a) the transfer was not made within the one- and six- year periods described above because of the factors which hampered an earlier transfer of the property, such as legal or business impediments to transfer or disputes concerning the value of the property owned at the time of the cessation of the marriage, and (b) the transfer is effected promptly after the impediment to transfer is removed.

Section 71(b)(2) of the Code provides that the term 'divorce or separation instrument' means (A) a decree of divorce or separate maintenance or written

instrument incident to such a decree, (B) a written separation agreement, or (C) a decree (not described in subsection (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

The transfer of B's undivided one-half interest in Property from B to A and the transfer of Net Purchase Price from A to B are pursuant to a divorce or separation instrument, as defined in section 71(b)(2) of the Code. While the transfers occurred more than 6 years after the date on which the marriage ceased, the Stipulation and Order 2 were a modification and amendment to Stipulation and Order 1. The transfers were made to effect the division of property owned by the former spouses at the time of the cessation of their marriage. Accordingly, based on the facts submitted and the representations made, the payment by A to B of the Net Purchase Price and the transfer of B's undivided one-half interest in Property from B to A constitutes transfers between former spouses that are 'incident to divorce' under § 1041 of the Code.

Ruling 2

Section 2501(a) of the Code imposes a tax for each calendar year on the transfer of property by gift during such calendar year by an individual.

Section 2511(a) of the Code provides that the gift tax applies to a transfer by gift 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) of the Code provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2516 of the Code provides that where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of issue of the marriage during minority, shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

In this case, the divorce of A and B occurred less than 1 year before Stipulation and Order 1 was entered by Court. Therefore, stipulations governing Property under Stipulation Order 1 are within the purview of section 2516. Accordingly, transfers that A and B make pursuant to Stipulation and Order 1 are deemed made for full and adequate consideration in money or money's worth and, thus, are not subject to the gift tax.

The purchase price stipulated in Stipulation and Order 2 is consistent with the purchase stipulated in Stipulation and Order 1. Both Stipulation and Order 1 and Stipulation and Order 2 call for the transfer of a one-half interest in Property in exchange for a purchase price equal to one-half of the fair market value of Property, calculated after A and B share equally the cost of paying off the mortgage and the costs related to maintenance, upkeep, remediation and repair of Property. Court entered Stipulation and Order 2 to effectuate, under changed circumstances, transfers contemplated in Stipulation and Order 1 to resolve ultimate ownership of Property. Therefore, section 2516 is applicable to transfers A and B made pursuant to Stipulation and Order 2, and these transfers are deemed made for full and adequate consideration in money or money's worth and, thus, are not subject to the gift tax.

Accordingly, based on the facts submitted and representations made, we conclude that the payment by A to B of the Net Purchase Price and the corresponding transfer by B to A of B's 50 percent interest in Property constitute transfers for full and adequate consideration in money or money's worth under section 2516 that do not result in a taxable gift by either A or B.

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 taxpayers requesting it. Section 6110(k)(3) of the Code 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.

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,

William A. Jackson
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: