

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-122264-00

Date:

February 2, 2001

LEGEND:

Taxpayer =

Country =

Company 1 =

Year 1 =

State =

Spouse =

Son =

Year 2 =

Company 2 =

Property =

a =

b =

Date 1 =

Trust =

c =

Continent =

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Dear

We received your representative's letter, dated September 15, 2000, requesting rulings regarding application of the rules for a qualified personal residence trust under § 2702 of the Internal Revenue Code. This letter responds to your request.

The facts and representations submitted are summarized as follows: Taxpayer is a citizen of Country. Taxpayer was employed by Company 1 in Country, and over the course of his career he accepted various positions that required his relocation to other countries. In Year 1, Taxpayer joined the senior management of Company 1 in State, and Taxpayer, Spouse, and Son applied for and obtained green cards (became lawful permanent residents of the United States). In Year 2, Taxpayer accepted a senior management position with Company 2 in Country.

Taxpayer is the sole owner of Property, which is located in State and consists of a acres of land. Property is improved by a single-family residence containing approximately b square feet of living space with a waterfront view and a swimming pool. Property consists of one parcel on the local tax map and is assessed as a single lot for property tax purposes. Other residential properties in the area are of substantially the same size and character.

Taxpayer represents that he and his family have used Property as their personal residence, and Property has never been, nor will it ever be, used as rental property. Taxpayer further represents that no commercial activity of any type has ever been conducted on Property.

On Date 1, Taxpayer transferred his entire interest in Property to Trust, the terms of which are intended to satisfy the requirements of § 25.2702-5(c) of the Gift Tax Regulations as a qualified personal residence trust ("QPRT"). The trust will terminate upon the earliest of c years from the date it was established or the date of Taxpayer's death. Taxpayer intends to timely file Form 709 (United States Gift and Generation-Skipping Transfer Tax Return) to report this gift in trust.

Taxpayer represents that he and Spouse intend to surrender their green cards and return to Country within the next two years. Taxpayer further represents that Son is presently attending college in Continent and plans to continue his education there when Taxpayer and Spouse return to Country. Taxpayer and Spouse will continue to utilize Property as their United States residence and anticipate spending several weeks or months at the residence, primarily during the summer and holidays. Taxpayer represents that Property will not be used for any other purpose than that of Taxpayer's personal residence and will be available at all times for his use.

The preamble of Trust provides that Taxpayer irrevocably conveys to trustees, in trust, the property described on the schedule attached to the Trust, such property

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consisting of real property together with Taxpayer's personal residence located thereon, and any other property that the trustees are permitted to receive or acquire by the provisions of the instrument. Article Fourth provides, except as otherwise permitted by § 25.2702-5(c), that during the term of the trust created by Article Second, the trustees shall be prohibited from holding any asset in such trust other than one residence to be used as a personal residence by Taxpayer.

Article Second, paragraph (A)(1) provides that it is Taxpayer's intention to create a qualified personal residence trust within the meaning of § 2702(a) and § 25.2702-5(c).

Article Second, paragraph (A)(3) provides that Taxpayer shall have the right to the exclusive use, possession and enjoyment of any personal residence held by the trustees in such trust.

Article Second, paragraph (A)(4) provides that the trustees shall distribute the net income, if any, of such trust to Taxpayer at the end of each calendar quarter.

Article Second, paragraph (A)(5) provides that the trustees shall not distribute any portion of the income or principal of such trust to any person other than Taxpayer during the term of such trust; provided, however, that nothing in this paragraph shall be construed to prevent the payment by the trustees of expenses properly payable by such trust.

Article Second, paragraph (A)(6) provides that the trustees shall distribute to Taxpayer, at the end of each calendar quarter, any portion of the principal of such trust which is in excess of the amount permitted to be held by the trustees in such trust in accordance with the provisions of § 25.2702-5(c)(5)(ii)(A)(2).

Article Second, paragraph (A)(7)(a) provides that commencing upon the date, if any, during the term of such trust on which the residence held in such trust ceases to be a personal residence of Taxpayer, the trustees shall administer the then principal of such trust in accordance with the provisions of Article Third and the subsequent provisions of this instrument; provided, however, that such cessation shall be deemed to occur only if and when it is deemed to occur in accordance with the provisions of § 25.2702-5(c)(7), and only such portion of the principal as is required by § 25.2702-5(c)(7)(ii) to be so administered shall be so administered.

Article Second, paragraph (A)(7)(b) provides that if the residence held in such trust is sold or destroyed without such cessation being deemed to occur, the trustees shall administer any net sales or insurance proceeds in excess of those used to purchase or build a successor personal residence for Taxpayer within the time required by § 25.2702-5(c) in accordance with the provisions of Article Third and the subsequent provisions of this instrument, but only if and to the extent required by § 25.2702-5(c).

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Article Second, paragraph (A)(8) provides that the trustees may not sell or otherwise transfer, directly or indirectly, all or any part of such personal residence to Taxpayer, Spouse, any trust which is treated as owned by Taxpayer and/or Spouse for income tax purposes or any entity controlled by Taxpayer or Spouse.

Article Second, paragraph (A)(9) provides that such trust shall terminate on the first to occur of the c year anniversary of the establishment of the trust or the date of Taxpayer's death. Article Second, paragraph (A)(9)(a) provides that if Taxpayer dies on or before the termination date, the trustees shall distribute the then principal of such trust, together with all net income, to the executors and administrators of Taxpayer's estate.

Article Second, paragraph (A)(9)(b) provides for distribution of trust assets if Taxpayer is living on the day after the termination date. Article Second, paragraph (A)(9)(b)(i) provides that the trustees shall distribute to Taxpayer any portion of the trust assets that was held for the payment of expenses, but only to the extent required by § 25.2702-5(c)(5). Article Second, paragraph (A)(9)(b)(ii) provides that the trustees shall distribute to Taxpayer all of the net income on hand or accrued at the close of business on the termination date.

Article Second, paragraph (A)(9)(b)(ii)(A) provides that, subject to the provisions of paragraph (A)(10) of this Article, if Spouse is living on the distribution date, the trustees shall hold the property in further trust, for the benefit of Spouse and Son. Article Second, paragraph (B)(5) provides that upon the death of Spouse, such trust shall terminate. Thereupon the trustees shall distribute the then principal of such trust to Son if he survives Spouse, or to the executors or administrators of Son's estate if he does not survive Spouse.

Article Third provides provisions addressing administration of the trust principal after cessation of use as a personal residence. Article Third provides that the trustees shall hold the property, if any, to be administered in accordance with the provisions of Article Third, in further trust, and that the trustees shall distribute to Taxpayer, in each taxable year of such trust, an annuity amount determined under § 25.2702-5(c)(8). The provisions of § 25.2702-3 are incorporated to establish and administer the trust share as a qualified annuity interest.

Article Fourth, paragraph (E)(1) provides that anything in the prior provisions of the instrument to the contrary notwithstanding, to the extent permitted by § 25.2702-5(c), during the term of the trust created by Article Second (A) of this instrument, the trustees may hold cash or cash equivalents as an asset of such trust, but not in excess of the amount required (a) for the payment of trust expenses already incurred or reasonably expected to be incurred within six months of the receipt of the cash by the trustees, (b) for improvements to the personal residence, to be paid for within six months of the receipt of the cash by the trustees, (c) for the purchase of a personal residence within three months of the date of this instrument, or (d) for the

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purchase of a personal residence within three months of the receipt of the cash by the trustees if the trustees shall have previously entered into a contract to purchase said personal residence.

Article Fourth, paragraph (E)(2) provides that the trustees may hold the proceeds of the sale of any personal residence (including the net income therefrom) for a period of not more than two years from the date of such sale if such proceeds are to be used within such period to purchase another residence to be used as a personal residence by Taxpayer during the term of such trust, and may hold insurance proceeds paid to the trustees as a result of damage to or the destruction of any personal residence for a period of not more than two years if such proceeds are to be used for the repair, improvement or replacement of said personal residence.

Article Fourth, paragraph (F) provides that the interest of Taxpayer in any trust created by this instrument shall not be subject to commutation (prepayment).

You have requested the following rulings: (1) Property satisfies the requirements of §§ 2702(a)(3)(A)(ii) and 25.2702-5(c)(2); (2) Trust satisfies the requirements of § 25.2702-5(c) and, therefore, the transfer is a transfer to a qualified personal residence trust; (3) Taxpayer's transfer of the contingent remainder interest in Trust is a completed gift for Federal gift tax purposes, the value of which is equal to the fair market value of Property transferred to Trust minus (a) the present value of Taxpayer's retained income interest in Property determined under § 7520 and (b) Taxpayer's retained contingent reversion in Property determined under § 7520; and (4) Taxpayer's surrender of his green card and repatriation to Country, which will likely occur during the term of the retained interest in Trust, will not cause Trust to fail the requirements of §§ 2702(a)(3)(A)(ii) or 25.2702-5(c).

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 the trust retained by the transferor or any applicable family member (as defined in § 2701(e)(2)) is determined as provided in § 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 shall be determined under § 7520.

Section 2702(a)(3)(A)(ii) provides that § 2702(a)(2) does not apply to any transfer if the 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) 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

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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 § 25.2702-5(c)) is treated as a personal residence trust.

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 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). The fact that a residence is subject to a mortgage does not affect its status as a personal residence. The term personal residence does not include any personal property (e.g., household furnishings).

Section 25.2702-5(c)(3) provides that the governing instrument must require that income of the trust be distributed to the term holder not less frequently than annually.

Section 25.2702-5(c)(4) provides that the governing instrument must prohibit distributions of corpus to any beneficiary other than the transferor prior to the expiration of the retained term interest.

Section 25.2702-5(c)(5)(i) provides that, in general, except as otherwise provided in paragraphs (c)(5)(ii) and (c)(8) of this section, 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 paragraph (c)(7)(i) of this section) as a personal residence of the term holder (the "residence"). Under § 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)(6) provides that the governing instrument must prohibit commutation (prepayment) of the term holder's interest.

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. Under the

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regulation, 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(c)(8)(i) provides that the governing instrument must provide that, within thirty days after the date on which the trust has ceased to be a qualified personal residence trust with respect to certain assets, either, (A) the assets be distributed outright to the term holder; (B) the assets be converted to and held for the balance of the term holder's term in a separate share of the trust meeting the requirements of a qualified annuity interest; or (C) in the trustee's sole discretion, the trustee may elect to comply with either paragraph (C)(8)(i)(A) or (B) of this section pursuant to their terms. If the assets are to be converted to and held as a qualified annuity interest, the governing instrument must contain all the provisions required by § 25.2702-3 with respect to a qualified annuity interest.

Section 25.2702-5(c)(9) provides that the governing instrument must prohibit the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse during the retained term interest of the trust or at any time after the retained term interest that the trust is a grantor trust.

Section 2501 imposes a tax, computed as provided in § 2502, 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 imposed by § 2501 applies 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.

Under § 25.2511-1(e), if a donor transfers by gift less than his entire interest in property, the gift tax is applicable to the interest transferred. The tax is applicable, for example, to the transfer of an undivided half interest in property, or to the transfer of a life estate when the grantor retains the remainder interest, or vice versa.

Section 25.2511-2(b) states that, as to any property or part thereof or interest therein, of which 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 the benefit of another, the gift is complete.

Section 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 25.2512-5(d)(2) provides that, when the donor transfers property in trust or otherwise and retains an interest therein, generally, the value of the gift is the value

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of the property transferred less the value of the donor's retained interest. However, if the donor transfers property after October 8, 1990, to or for the benefit of a member of the donor's family, the value of the gift is the value of the property transferred less the value of the donor's retained interest as determined under § 2702. If the donor assigns or relinquishes an annuity, life estate, remainder, or reversion that the donor holds by virtue of a transfer previously made by the donor or another, the value of the gift is the value of the interest transferred.

Under § 2702(a)(2), 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 § 7520.

Under § 7520(a)(1), the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest is determined under tables prescribed by the Secretary.

Based on the facts submitted and representations made, we conclude that Property satisfies the requirements of a personal residence as set forth in § 2702(a)(3)(A)(ii) and § 25.2702-5(c)(2). The provisions of Trust satisfy the requirements of § 25.2702-5(c). Accordingly, Trust is a qualified personal residence trust pursuant to § 25.2702-5(c), and Taxpayer's transfer qualifies as a transfer to a qualified personal residence trust.

Accordingly, the value of the gift is determined under § 2512 without regard to § 2702. Based upon the facts submitted and representations made, we conclude that Taxpayer's transfer of Property to Trust constitutes a completed gift for gift tax purposes. The value of the gift, determined under § 25.2512-5(d)(2), is the fair market value of Property as of the date of transfer minus (a) the present value of Taxpayer's retained term interest in Property determined under § 7520 and (b) the present value of Taxpayer's retained contingent reversion in Property determined under § 7520.

In addition, Taxpayer's surrender of his green card and repatriation to Country during the term of his retained interest in Trust, will not cause Trust to fail the requirements of §§ 2702(a)(3)(A)(ii) or 25.2702-5(c).

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. 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. 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.

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

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federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. In addition, we express or imply no opinion on the federal tax consequences of the transaction under §§ 877, 2107, and 2501(a)(3). 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,
Melissa C. Liquerman
Acting Branch Chief, Branch 9
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter