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Department of the Treasury
Washington, DC 20224

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LEGEND

Date 1 =
Decedent =
Spouse =
Trust =

Date 2 =
Marital Trust =
Child 1 =
Child 2 =
Statute 1 =
Statute 2 =
Statute 3 =

Dear :

This letter responds to your authorized representative's letter dated August 22, 2016, and subsequent correspondence, requesting rulings concerning the federal gift and estate tax treatment of the proposed division of a trust into two trusts and the subsequent renunciation of a qualified income interest in one of the trusts.

FACTS

The facts submitted and the representations made are summarized as follows: On Date 1, Decedent and Spouse created Trust, which became irrevocable upon Decedent's death on Date 2.

Pursuant to Article IV, paragraph A of Trust, upon Decedent's death, the trust estate was divided into three separate trusts: Marital Trust, Decedent's Trust, and Survivor's Trust. This private letter ruling pertains to Marital Trust.

Under Article IV, paragraph C(3), the Trustee shall pay to or apply for the benefit of Spouse, in quarterly or more frequent installments, all of the net income of Marital Trust, and as much of the principal as the Trustee deems appropriate for Spouse's health and support in his accustomed manner of living. The current trustees of Marital Trust are Child 1 and Child 2.

Article V, paragraph F, provides that on the death of Spouse, Decedent's Trust, Marital Trust and the remaining and unappointed balance, if any, of Survivor's Trust shall be combined (but, in the discretion of the Trustee, may be administered as separate shares or portions). The Trustee shall divide the combined Trust Estate into nineteen equal shares. The Trustee shall allocate three shares to the group composed of the grandchildren of Decedent and Spouse who are living at Spouse's death, provided, however that the total amount allocated to such grandchildren does not exceed the generation-skipping transfer (GST) tax exemption available at the time of Spouse's death. The Trustee shall further divide the shares (or amount) allocated to such living grandchildren into equal shares and allocate one share to each member of the group.

The Trustee shall allocate sixteen shares (or the balance of the residue) to the group composed of the descendants of Decedent and Spouse living at Spouse's death. The Trustee shall further divide the shares (or the balance of the residue) allocated to the descendants of Decedent and Spouse into equal shares and allocate one share to each child who survive Spouse and one share to each group composed of the then-living descendants of each child who fails to survive Spouse. Each share allocated to a group composed of then-living descendants of a deceased child shall be further divided into separate shares for the members of the group upon the principal of representation.

Article V, paragraph F(3) provides that each resulting share shall be set aside as a separate trust and held and administered for the benefit of the beneficiary as provided in paragraph G.

Paragraph G of Article V provides that each share allocated under paragraph F shall be held and administered as follows: Until the beneficiary attains the age of twenty-one, the Trustee shall pay or apply for the benefit of the beneficiary as much of the net income and principal of his or her share as the Trustee, in the Trustee's discretion, deems necessary for the beneficiary's proper health, education, support and maintenance. Upon attaining the age of twenty-one, the Trustee shall pay or apply to

for the benefit of the beneficiary all of the net income of the beneficiary's share. Trustee shall also pay or apply for the benefit of the beneficiary as much of the principal of his or her share as the Trustee, in the Trustee's discretion, deems necessary for the beneficiary's proper health, education, support and maintenance. Upon the beneficiary's death, the then-remaining balance of the beneficiary's share shall be distributed to such one or more persons or entities, without limitation and including the beneficiary's own estate, as the beneficiary may appoint by an instrument in writing other than a will delivered to the Trustee during the beneficiary's lifetime which specifically refers to and exercises this general power of appointment. Any portion of the beneficiary's share not effectively appointed shall be distributed to the beneficiary's descendants then living, by right of representation, or, if none, to the then-living descendants of the beneficiary's parent who is a descendant of Decedent and Spouse, by right of representation, or, if none, to Decedent's and Spouse's descendants then living, by right of representation. Any share allocated to a living descendant of Decedent and Spouse for whom a trust is not already being administered under Trust shall be retained in trust and administered under the provisions of Article V, paragraph G.

Article VI, paragraph B(16) provides that the Trustee has the power to divide any trust created hereunder into any number of separate trusts whether or not such trusts were previously separate or combined for any purpose including, but not limited to, allocation of the transferor's GST exemption under § 2631 or any successor provision to one subtrust to the exclusion of another subtrust or disproportionately between them. Each subtrust created by division of any trust shall otherwise have the same terms and same beneficiaries as the original trust. In allocating assets to subtrusts under this provision, the Trustee shall use date of division values of such assets.

Article VII, paragraph A provides that the interests of trust beneficiaries under this instrument shall not be voluntarily or involuntarily alienated or encumbered (other than by specific disclaimer) and, to the extent permissible by law, shall be free from execution, attachment, bankruptcy and other procedures for the satisfaction of creditors' claims.

Decedent's personal representative elected on the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, to treat Marital Trust as qualified terminable interest property (QTIP) under § 2056(b)(7).

The Trustee of Marital Trust proposes to divide Marital Trust into two separate trust shares (Marital Trust One and Marital Trust Two). Each share will be administered as a separate trust for the benefit of Spouse upon the same terms as Marital Trust. Spouse will renounce any right, title or interests he has in Marital Trust One with the result that his interests in income and principal of Marital Trust One will terminate. The trust property of Marital Trust One will be divided into separate trusts pursuant to Article V, paragraph F, and distributed under the terms of Article V, paragraph G.

Statute 1 provides that a beneficiary may disclaim any interest, in whole or in part, by filing a disclaimer as provided in this part.

Statute 2 provides that the disclaimer must be in writing, signed by the disclaimant, identify the creator of the interest, describe the interest to be disclaimed and state the disclaimer and the extent of the disclaimer.

Statute 3 provides that unless the creator of the interest provides for a specific disposition of the interest in the event of a disclaimer, the interest disclaimed shall descend, go, be distributed, or continue to be held (1) as to a present interest, as if the disclaimant had predeceased the creator of the interest or (2) as to a future interest, as if the disclaimant had died before the event determining that the taker of the interest had become finally ascertained and the taker's interest indefeasibly vested. A disclaimer relates back for all purposes to the date of the death of the creator of the disclaimed interest or the determinative event, as the case may be.

You have requested the following rulings:

1. When Spouse renounces his interests in Marital Trust One, Spouse will not be deemed to have made a gift of the property of Marital Trust Two under § 2519.
2. When Spouse renounces his interests in Marital Trust One, the value of Spouse's income interest in Marital Trust One will not be valued at zero under § 2702.
3. After Spouse renounces his interests in Marital Trust One, no part of Marital Trust One deemed transferred under § 2519 will be includible in Spouse's gross estate under § 2044(b)(2).

LAW

Section 2056(b)(7) of the Internal Revenue Code allows an estate tax marital deduction for qualified terminable interest property. Under § 2056(b)(7)(B)(i), the term "qualified terminable interest property" means property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which the qualified terminable interest election under § 2056(b)(7)(B)(v) applies. Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and no person has a power to appoint any part of the property to any person other than the surviving spouse during the surviving spouse's life.

Section 2044(a) provides, in part, that the value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life. Section 2044(b) provides that § 2044(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7)

and § 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511(a) 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 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 25.2511-2(a) provides that the gift tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

Section 2519 provides, in part, that for gift and estate tax purposes any disposition of all or part of a qualifying income interest for life in any property for which a deduction was allowed under § 2056(b)(7) is treated as a transfer by the surviving spouse of all interests in the property other than the qualifying income interest. The transfer of the qualifying income interest of the spouse is a transfer by the spouse subject to gift tax under § 2511. Section 25.2519-1(a).

Section 25.2519-1(c)(1) provides that the amount treated as a transfer under § 2519 upon a disposition of all or part of a qualifying income interest for life in qualified terminable interest property is equal to the fair market value of the entire property subject to the qualifying income interest, determined on the date of the disposition (including any accumulated income and not reduced by any amount excluded from total gifts under § 2503(b) with respect to the transfer creating the interest), less the value of the qualifying income interest in the property on the date of the disposition. The gift tax consequences of the disposition of the qualifying income interest are determined separately under § 25.2511-2.

Section 2702(a)(1) provides that solely for the purpose 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 (as defined in § 2702(b)) shall be treated as being zero and the value of any retained interest that is a qualified interest (as defined in § 2702(b)) shall be

determined under § 7520. Under § 25.2702-2(a)(3), the term “retained” means held by the same individual both before and after the transfer in trust.

Ruling 1

In this case, pursuant to the terms of Marital Trust and with respect to the qualified terminable interest property election made by Decedent’s estate, the assets of Marital Trust are treated as qualified terminable interest property under § 2056(b)(7)(i). Spouse has a qualifying income interest for life in Marital Trust. Marital Trust One and Marital Trust Two will have terms identical to Marital Trust. The trustees have the power under Article VI, paragraph B(16), to divide Marital Trust. Therefore, after the division of Marital Trust into Marital Trust One and Marital Trust Two, Spouse will continue to have a qualifying income interest for life in both Marital Trust One and Marital Trust Two. Accordingly, the division of Marital Trust into Marital Trust One and Marital Trust Two will not disqualify Marital Trust One and Marital Trust Two as QTIP trusts under § 2056(b)(7).

Spouse proposes to renounce his interests in Marital Trust One pursuant to Article VII, paragraph A, and Statute 1. When Spouse renounces his interests in Marital Trust One, the renunciation will be deemed a gift of Spouse’s income interest in Marital Trust One under § 2511, and a gift of all the property owned by Marital Trust One, other than Spouse’s qualifying income interest in Marital Trust One, under § 2519. Spouse’s gift tax liability for the transfer of his qualifying income interest in Marital Trust One will be determined under § 25.2511-2.

Based on the facts submitted and the representations made, we conclude that when Spouse renounces his right, title and interests in Marital Trust One, Spouse will not be deemed to have made a gift of the property in Marital Trust Two under § 2519.

Ruling 2

In this case, Marital Trust will be divided into Marital Trust One and Marital Trust Two and, subsequently, will be funded as separate trusts. As a result, Spouse’s interests in Marital Trust One will be separate and distinct from his interests in Marital Trust Two. Therefore, when Spouse renounces his right, title and interests in Marital Trust One, Spouse’s interests in Marital Trust Two are not treated as a retained interest for purposes of § 2702(a)(1). Accordingly, based on the facts submitted and the representations made, we conclude that Spouse’s renunciation of his entire interest in Marital Trust One will not result in Spouse’s interest in Marital Trust Two being valued at zero under § 2702.

Ruling 3

When Spouse renounces his right, title and interests in Marital Trust One, Spouse will be deemed to have made a transfer of all of the property of Marital Trust

One, other than his qualifying income interest therein, under § 2519. Section 2044(a) provides that the value of Spouse's gross estate shall include the value of any property in which Spouse had a qualifying income interest for life. Section 2044(b)(2) provides that § 2044(a) does not apply to any property if § 2519 applies to the disposition of part or all of that property prior to Spouse's death. Therefore, based on the facts submitted and the representations made, we conclude that the property owned by Marital Trust One that is deemed transferred pursuant to § 2519 will not be included in Spouse's gross estate under § 2044(a) because of the application of § 2044(b)(2).

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) of the Code provides that it may not be used or cited as precedent.

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.

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

Sincerely,

Lorraine E. Gardner
Lorraine E. Gardner
Senior Counsel, Branch 4
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes

cc: