

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-137129-02

Date:

September 10, 2002

Re:

### Legend

Decedent	=
Date 1	=
Taxpayer	=
State	=
State Statute	=
Marital Trust A	=
Marital Trust B	=
\$X	=

Dear :

This is in response to your June 28, 2002 letter, and subsequent correspondence, requesting a ruling concerning the Federal estate and gift tax treatment of the proposed severance of a trust into two trusts and your subsequent renunciation of your interest in one of the severed trusts.

The facts submitted and the representations made are summarized as follows. Decedent died testate on Date 1, survived by his spouse, Taxpayer.

Pursuant to the provisions of Article VII of Decedent's will, Decedent's residuary estate is being held in trust for the benefit of Taxpayer. During her lifetime, Taxpayer is to receive all the net income from the trust at least quarter-annually. The trustees of the trust also have the authority to distribute trust principal for the maintenance and support

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of Taxpayer. Upon Taxpayer's death, the remaining assets of the trust are to be distributed in equal shares to Decedent's children. Each child will receive his or her share of the trust assets free of the terms of the trust provided the child has attained the age of 37 at the date of Taxpayer's death. Shares passing to a child under the age of 37 will be held in further trust and distributed outright to the child at the earlier of the child attaining the age of 37 or five years elapsing since the Taxpayer's death.

Article VII further authorizes the estate's personal representatives to elect that any part or all of the trust assets qualify for the marital deduction for federal estate tax purposes. In accordance with this provision, the Decedent's estate elected on Decedent's estate tax return to treat the property held in trust for Taxpayer as qualified terminable interest property ("QTIP") pursuant to section 2056(b)(7)(B)(v) of the Internal Revenue Code.

Pursuant to Article X of Decedent's will, the trustees have all the duties, powers and responsibilities granted trustees under State trust administration law. Under State Statute, the trustees may sever any trust on a fractional basis into two or more separate and identical trusts, unless expressly provided to the contrary in the trust instrument. Each separate trust must be held and administered under identical terms and conditions as the trust from which it was severed.

The trustees now propose to file a petition requesting the court's authorization under State law to divide the trust into two separate and distinct trusts, Marital Trust A and Marital Trust B. Marital Trust A will be funded with \$X of the trust assets. Marital Trust B will be funded with the remaining assets of the trust. Both Marital Trust A and Marital Trust B will be administered by the trustees and governed by the original terms and conditions of the trust in accordance with State law. Once the trust is divided into Marital Trust A and Marital Trust B, Taxpayer proposes to renounce her entire interest in Marital Trust A.

The following rulings have been requested:

1. If Taxpayer renounces her entire interest in Marital Trust A, Taxpayer will not be deemed to have made a gift of the property in Marital Trust B under section 2519.
2. If Taxpayer renounces her entire interest in Marital Trust A, the value of Taxpayer's income interest in Marital Trust B will not be valued at zero under section 2702.
3. If Taxpayer renounces her qualified income interest in Marital Trust A, no part of the trust's property deemed transferred under section 2519 will be included in

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Taxpayer's gross estate under section 2044(b)(2).

LAW:

Section 2044(a) provides 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 section 2044(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under section 2056(b)(7) and section 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2056(b)(7) allows an estate tax marital deduction for qualified terminable interest property (QTIP). Under section 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 QTIP election under section 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 2501 imposes a tax on the transfer of property by gift by an individual. Under section 2502(c), the gift tax imposed under section 2501 is the liability of the donor. Section 2511 provides that the tax imposed by section 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 25.2511-2(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 2512(b) provides that, where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration is deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

Section 2519(a) provides that any disposition of all or part of a qualifying income interest for life in any property to which section 2519 applies is treated as a transfer of all interests in the property other than the qualifying income interest. Section 2519(b) provides that section 2519 applies to any property if a deduction was allowed with respect to the transfer of such property to the donor under section 2056(b)(7). Section

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25.2519-1(a) provides that if a donee spouse makes a disposition of all or part of a qualifying income interest for life in any property for which a deduction was allowed under section 2056(b)(7), the donee spouse is treated for purposes of chapters 11 and 12 of the Code as transferring all interests in property other than the qualifying income interest. If donee spouse makes a disposition of part of a qualifying income interest for life in trust corpus, the spouse is treated under section 2519 as making a transfer subject to chapters 11 and 12 of the entire trust other than the qualifying income interest for life. Therefore, the donee spouse is treated as making a gift under section 2519 of the entire trust less the qualifying income interest including that portion of the trust corpus from which the retained income interest is payable. A transfer of all or a portion of the income interest of the spouse is a transfer by the spouse under section 2511.

Section 25.2519-1(c)(1) provides that the amount treated as a transfer under section 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 section 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 section 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 section 2701(e)(2)) shall be determined as provided in section 2702(a)(2). Section 2702(a)(2) provides that the value of any retained interest which is not a qualified interest (as defined in section 2702(b)) shall be treated as being zero and the value of any retained interest that is a qualified interest (as defined in section 2702(b)) shall be determined under section 7520. Under section 25.2702-2(a)(3), the term "retained" means held by the same individual both before and after the transfer in trust.

#### RULING 1:

Pursuant to State law and the representations made herein, Marital Trust A and Marital Trust B will be separate trusts for all purposes from the effective date of the court's order. Therefore, Taxpayer's renunciation of her entire interest in Marital Trust A will not result in a transfer under section 2519 of any of the assets of Marital Trust B.

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**RULING 2:**

Pursuant to State law and the representations made herein, Marital Trust A and Marital Trust B will be separate trusts for all purposes from the effective date of the court's order. As a result, Taxpayer's interest in Marital Trust A will be separate and distinct from her interest in Marital Trust B. Therefore, when Taxpayer renounces her entire interest in Marital Trust A, Taxpayer's interest in Marital Trust B is not treated as a retained interest for purposes of section 2702(a)(1). Accordingly, Taxpayer's renunciation of her entire interest in Marital Trust A will not result in Taxpayer's interest in Marital Trust B being valued at zero under section 2702.

**RULING 3:**

When Taxpayer renounces her qualified income interest in Marital Trust A, she will be deemed to have made a transfer of all of the property of Marital Trust A, other than her qualifying income interest, under section 2519. Section 2044(a) provides that the value of Taxpayer's gross estate shall include the value of any property in which Taxpayer had a qualifying income interest for life. Section 2044(b)(2) provides that section 2044(a) does not apply to any property if section 2519 applies to the disposition of part or all of that property prior to Taxpayer's death. Therefore, pursuant to section 2044(b)(2), the property Taxpayer is deemed to have gifted under section 2519 will not be included in Taxpayer's gross estate.

The rulings contained in this letter are based upon information and representations submitted by 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.

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 Taxpayer, the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters. 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 yours,

By: Melissa C. Liquerman

Melissa C. Liquerman  
Branch Chief, Branch 9  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: Copy of this letter for section 6110 purposes