

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

April 2, 2001

LEGEND:

Property =

Taxpayer =

Trust =

x =

Year =

Country =

Dear Sir:

We received your letter, dated November 28, 2000, and subsequent correspondence, 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 is the sole owner of Property and 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 her entire interest in Property to Trust.

Property consists of approximately x acres of land and is improved by a single family dwelling, a barn, a small shed, and a garage. Taxpayer represents that the barn and shed are used for storage. Property is assessed for municipal tax purposes as a single parcel. Other residential properties in the area are generally of a similar nature.

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Taxpayer inherited Property in Year. Taxpayer is a United States citizen, residing in Country. Taxpayer represents that she uses Property as her summer retreat and that her annual use of Property exceeds the minimum number of days required by § 280A(d). Taxpayer further represents that Property is used exclusively for seasonal residential purposes. Taxpayer occasionally allows friends to use Property when she is not there. Taxpayer asks her guests to pay for their use of utilities, but does not provide any services in connection with the use of the property and has never charged rent on the property. Taxpayer has never advertised Property as being available for rent to the general public.

Article III, paragraph A of Trust provides that during the trust term, the trustee shall, except as expressly permitted or required elsewhere in this instrument, hold the property (or any other personal residence owned by the trustee at any time) for use as a personal residence exclusively by Taxpayer and other persons, if any, who are spouses or dependents of Taxpayer. No other person shall be permitted or entitled to use the property during the term other than as a temporary guest of Taxpayer. No personal residence owned by the trustee shall be used for any nonresidential purpose by any person.

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

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 the transfer), the value of any interest in the 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 that is not a qualified interest shall be 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) shall 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 the trust.

Section 25.2702-5(a)(1) provides, in part, that § 2702 does not apply to a transfer in trust meeting the requirements of that section. A transfer in trust meets the requirements of § 25.2702-5(a)(1) only if the trust is a personal residence trust (as defined in § 25.2702-5(b)). 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

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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 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)(ii) provides, in part, 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).

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 and substantial services are provided in connection with the provision of 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 as a residence.

In the present case, other residential parcels in proximity to Property generally contain a similar amount of acreage and the improvements on Property are consistent with residential properties in the community. Taxpayer represents that she uses Property as a vacation home and that her annual personal use of Property exceeds the requirements of § 280A(d)(1). Accordingly, based on the facts and representations submitted, we conclude that Property, including improvements, 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

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

Enclosures

Copy of this letter

Copy for section 6110