

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date: March 6, 2000

LEGEND:

Taxpayer 1 =
Taxpayer 2 =
Property =
Trust 1 =
Trust 2 =
State =

Dear :

This is in response to your letter dated February 16, 2000, and prior correspondence in which you requested a ruling that a residence, although occasionally occupied by the son of the term holders, who is not a dependent, may still be held in a Qualified Personal Residence Trust (QPRT) within the meaning of § 25.2702-5(c) of the Code.

Facts

The facts and representations submitted are as follows:

Taxpayer 1 and Taxpayer 2, husband and wife, own Property located in State. Property is currently held in a land trust of which Taxpayers are the beneficial owners. Property consists of one parcel on the local tax map and is assessed as one parcel for property tax purposes. Property is similar in size to nearby properties used for residential purposes.

Property is improved by a residence which is currently being remodeled. Upon

completion of the remodeling, Taxpayers intend to use the residence for vacations, family gatherings, and entertaining guests. Taxpayers intend to use the residence for personal purposes for more than 14 days in each year.

Taxpayer's have a son who is married and has children. He is not a dependent of Taxpayers for income tax purposes. Son owns a home near Property and plans to retain this home as his personal residence. Taxpayers will allow Son and his family to use Property "occasionally" with their permission, but such permission "will not extend to use of the home on a full time continuous basis."

Taxpayer 1 proposes to transfer his undivided one-half interest in Property to a QPRT, and Taxpayer 2 proposes to transfer her undivided one-half interest in Property to a separate QPRT. The terms of both proposed trust documents are identical.

Each trust will terminate at the earliest of 8 years from the date it is established, or the date of the term holder's death, or the date the trust ceases to be a QPRT.

If a trust terminates at the end of the 8-year term, the trustee will distribute to the term holder any cash or other non-residence assets held by the trustee. The remaining principal will be distributed to a separate family trust.

If the term holder dies before the 8-year term expires, the trustee is to distribute the principal to any one or more persons or organizations and the term holder's estate as the term holder appoints by will. Any principal not effectively appointed is to be distributed to a trust for the benefit of the term holder's spouse, if the spouse is living. If the spouse is not living, the principal will pass to the term holder's estate.

If a trust ceases to be a QPRT with respect to any assets held in the trust, the trust assets must be converted and held as a qualified annuity.. The trust must function as a qualified annuity trust from the conversion date until the termination of the trust as specified in § 2702(b).

Law and analysis

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 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 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.

Section 2702(a)(3)(A)(ii) provides that § 2702(a) shall not apply to any 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) of the Gift Tax Regulations 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 the section only if the trust is a personal residence trust as defined in § 25.2702-5(b). Section 25.2702-5(b)(1) provides that a personal residence trust is a trust the governing instrument of which prohibits the trust from holding any asset other than one residence to be used as the personal residence of the term holder. 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 for purposes of § 2702(a)(3)(A)(ii), a qualified personal residence trust is a trust meeting all the requirements of the section. 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 a personal residence of a term holder is either the principal residence of the term holder (within the meaning of § 1034), one other residence of the term holder (within the meaning of § 280A(d)(1) but without regard to § 280A(d)(2)), or 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)(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 in connection with the provision of lodging (e.g., a hotel or a bed and breakfast).

Section 25.2702-5(c)(7) requires the governing instrument of a QPRT to provide that a trust will cease to be a QPRT if the residence ceases to be used or held for use as a personal residence of the term holder. Under the 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 dependent of the term holder) and is available at all times for use by the term holder as a personal residence.

In this case, Taxpayers represent that they intend to use Property as a personal residence. The occasional use of Property by Son and his family is not in conflict with § 25.2702-5(c)(7) because they will use Property only with the permission of Taxpayers and have no legal right to continue to use the residence after permission is withdrawn. Therefore, based on the facts submitted and the representations made, we conclude that Property may be held in a qualified personal residence trust within the meaning of § 25.2702-5(c).

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by Taxpayers. 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. Except as specifically ruled above, no opinion is expressed regarding the tax treatment of this transaction under any other provision of the Code or regulations.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George L. Masnik
Chief, Branch 4

Enclosure:
Copy for section 6110 purposes