

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-165326-04  
Date: DECEMBER 22, 2005

Re:

Legend  
Settlor -

Property -

X -  
State -

Dear :

This is in response to your letter dated December 14, 2005, and prior correspondence, submitted by your authorized representative requesting a ruling that Property constitutes a personal residence as described in section 25.2702-5(c)(2) of the Gift Tax Regulations.

The facts and representations submitted are summarized as follows. Settlor proposes to transfer Property, located in State, to trusts intended to qualify as a Qualified Personal Residence Trusts(QPRT) as described in § 25.2702-5(c).

The information submitted represents that Property is used solely as Settlor's vacation residence. No commercial activity is conducted on Property. Property is located on an island that is agricultural, rural and sparsely populated. Property consists of two contiguous parcels totaling X acres which constitute a portion of a larger tract owned by Settlor. The structures on Property include a single residence, "bathhouse", and "pavilion." The single residence and bathhouse are located on one of the parcels and the road that provides the sole access to the residence, bathhouse and pavilion extends across the other parcel. The bathhouse consists of a roof over a small outdoor bathtub. The pavilion is a one room structure with no plumbing. In addition, the

information submitted indicates that the size of Property is comparable to that of nearby properties used for residential purposes. It is represented that prior to transferring Property, Settlor will place a qualified conservation easement on Property by making a qualified conservation contribution with respect to Property as defined in section 170(h)(1) of the Internal Revenue Code.

You have requested a ruling that Property is 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 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)(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 the section 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)(5) provides that, in general, except as otherwise provided in § 25.2702-5(c)(5)(ii) and (c)(8), 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 § 25.2702-5(c)(7)(i)) 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)(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).

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). 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 this case, based on the facts submitted and the representations made, the size of Property is comparable to that of nearby properties used for residential purposes. Accordingly, for purposes of 25.2702-5(c)(2)(ii), Property includes adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location). In addition, the residence and appurtenant structures located on Property are used by Settlor exclusively for residential purposes. Therefore, we conclude that Property is a personal residence within the meaning of 2702(a)(3)(A)(ii) and 25.2702-5(c)(2).

Except as we have specifically ruled herein, we express no opinion under the cited provisions or under any other provision of the Code.

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal), the ruling will have no force or effect. If the taxpayers are in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

Pursuant to a Power of Attorney on file, a copy of this letter is being sent to your authorized representative.

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

Sincerely yours,  
Associate Chief Counsel  
(Passthroughs and Special  
Industries)  
George Masnik  
Chief, Branch 4

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: