

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
November 30, 1999

Number: **200011008**
Release Date: 3/17/2000
Index (UIL) No.: 2043.00-00, 2053.00-00, 2516.00-00
CASE MIS No.: TAM-111397-99/CC:DOM:P&SI:B7
District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

Decedent:
Spouse:
date 1:
date 2:
date 3:
date 4:
a:
b:
c:
d:

ISSUE(S):

Is the payment of life insurance proceeds to Decedent's adult children, a transfer of property or interest in property that is made, pursuant to a written agreement, to the Spouse in settlement of marital or property rights so the transfer is deemed to be for adequate and full consideration in money and money's worth under § 2516 of the Internal Revenue Code?

CONCLUSION:

The payment of life insurance proceeds to Decedent's adult children is not a transfer of property or interest in property that is made, pursuant to a written agreement, to the Spouse in settlement of marital or property rights. Therefore, the life insurance proceeds are not deemed to be a transfer for adequate and full consideration in money and money's worth under § 2516 of the Internal Revenue Code.

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FACTS:

On date 1, Decedent and Spouse entered into a written agreement relative to their marital and property rights, and this separation agreement was incorporated into the final divorce decree together with the property settlement. In the property settlement, Decedent retained all assets associated with the partnership in which Decedent was a partner and Spouse retained the homestead, personal property and valuables. The agreement provided that Decedent was to pay Spouse \$a per year for b years with permanent spousal maintenance of \$c per year.

The agreement also required Decedent to maintain a life insurance policy on Decedent's life with Spouse having the right to limit Decedent's ability to designate the beneficiaries of that policy to either the Decedent's Spouse or their adult children. The separation agreement provided that the Decedent would maintain the life insurance policy for the benefit of Spouse or their adult children so long as Decedent was obligated to pay spousal maintenance to Spouse, but the policy would terminate if the Decedent was no longer a partner in the partnership.

The final divorce decree was executed on date 2, within the 3 year period beginning on the date that was 1 year before Decedent and Spouse entered into the date 1 written agreement. The children of the marriage were adults at the time of the divorce. On date 3, Decedent changed the designated beneficiary on the life insurance policy from the Spouse to the d adult children. Decedent died in an accident on date 4. Decedent had not remarried at the time of the accident and had no other children.

The life insurance policy that Decedent was required to maintain provided that if Decedent left the partnership, the Decedent had the right to convert the policy to another type of policy assuming that Decedent paid the new premium and applied for the new policy on the insurance company's form. The new policy rates would be based on the Decedent's age at the time the conversion took place. The written agreement between Decedent and Spouse did not include a provision requiring Decedent to convert the term life insurance policy to another similar policy under the policy's conversion terms, if Decedent left the partnership.

LAW AND ANALYSIS:

Section 2053(a) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate will be determined by deducting from the value of the gross estate the amounts for funeral expenses, for administration expenses, for claims against the estate, and for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

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Section 2053(c)(1)(A) provides that the deduction allowed by § 2053 in the case of claims against the estate, unpaid mortgages, or any indebtedness will, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in § 2055 for the purposes specified therein, the deduction for those claims will not be so limited, but will be limited to the extent that it would be allowable as a deduction under § 2055 if such promise or agreement constituted a bequest.

Section 2043(b)(1) provides that for estate tax, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, will not be considered to any extent a consideration "in money or money's worth."

Section 2043(b)(2) provides that for purposes of § 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of § 2516 (relating to certain property settlements) will be considered to be made for an adequate and full consideration in money or money's worth.

Section 2516 provides where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not the agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—(1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of issue of the marriage during minority, will be deemed to be transfers made for a full and adequate consideration in money or money's worth.

The United States Tax Court in, Estate of Keller v. Commissioner, 44 T.C. 851 (1965), held that the requirement for adequate and full consideration is not met when the obligation in the property settlement is for adult children. In Keller, pursuant to a separation agreement, the taxpayer retained a life estate in his real property and provided in a deed that his ex-wife was to receive a life estate after his death and the two adult daughters would receive the remainder. The deed provided that the grant of the life estate to his ex-wife with a remainder to his adult daughters was for valuable consideration. The taxpayer argued that the grant of the remainder interest to his adult children would be deemed to be for adequate and full consideration if the court would read § 2516 of the gift tax law into § 2043 of the estate tax law. In dicta, the court stated that even if § 2516 were read into the estate tax law, it would be of no benefit to the taxpayer. The Keller case was decided before § 2043 was amended to include the § 2516 transfer of property for spousal support as a transfer for adequate and full consideration. Section 2043 was amended to include the § 2516 transfer of property for spousal support as a transfer for adequate and full consideration for estates of

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decedents dying after July 18, 1984.

In Estate of Kosow v. U.S., 45 F.3d 1524 (11th Cir. 1995), taxpayer and spouse divorced and at the time of the divorce had two minor children. Taxpayer agreed to leave two-thirds of his estate to his two children in lieu of paying a higher amount of support to his ex-wife in their property settlement. Taxpayer remarried and had three more children. Over 30 years later, taxpayer transferred virtually all of his property to his second wife. Taxpayer died a month later. Taxpayer's will expressly excluded the children from his first marriage from sharing in his estate. The taxpayer's estate and the children from the first marriage settled on a sum out of court and the estate claimed a § 2053 deduction for the settlement payments made to those children. The estate showed that under state law at the time of the divorce, the first spouse was entitled to a much higher amount of support in order to maintain the standard of living that spouse had prior to the separation. The estate provided evidence that a spouse, who had divorced her husband at approximately the same time and lived in similarly situated circumstances in the state, received approximately twice the amount of spousal support than the first spouse received in this case. The first spouse also had agreed to waive her right to modify the agreement based on a change in circumstances. For these reasons, the Kosow court granted the estate a § 2053 deduction for the settlement payments to the children from the first marriage. The Kosow court also recognized that one of the purposes of the § 2053 deduction was to prevent testators from depleting their estates by transforming bequests to the natural objects of their bounty into deductible claims.

Under the present facts, Spouse was not the only permissible beneficiary of the life insurance policy. Spouse only had a right to veto a change in beneficiary if the change was made to a beneficiary outside of one of the designated beneficiaries in the written agreement between Decedent and Spouse. In addition, the children of the marriage were adults at the time of the agreement. Further, Decedent designated the d adult children as beneficiaries of the life insurance policy and left the remainder of the estate to those children, the natural objects of Decedent's bounty. Finally, there is no evidence that Spouse accepted a lower than normal support award in order to obtain the ability to restrict the Decedent's designation of life insurance beneficiaries. Thus, we conclude that the payment of life insurance proceeds to Decedent's adult children is not a transfer of property or interest in property that is made, pursuant to a written agreement, to the Spouse in settlement of her marital or property rights. Therefore, the life insurance proceeds are not deemed to be a transfer for adequate and full consideration in money and money's worth under § 2516 of the Internal Revenue Code.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.