Internal Revenue Service

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Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4\PLR-112236-99
Date:
March 23, 2000

Re:

LEGEND:

Decedent =

Spouse =

Trust =

State =

Company =

Date 1 =

Date 2 =

$w =

$x =

$y =

Dear :

This is in response to your letter dated May 19, 1999, requesting a ruling concerning the application of the unified credit under section § 2010 of the Internal Revenue Code with respect to Decedent's estate.

The facts and representations submitted are summarized as follows: Decedent died on Date 1, a resident of State. Under the terms of the First Codicil to Decedent's will, if Decedent is survived by Spouse, the residuary estate is divided into two parts. One part, equal to the entire residuary estate less the largest amount necessary to

permit the estate to use in full any available unified credit and state death tax credit under § 2010 and § 2011 of the Internal Revenue Code, is to pass to a marital trust for the benefit of Spouse. The balance of the residuary estate is to pass to a "Residuary Trust" (Trust) for the lifetime benefit of Spouse.

Decedent and Spouse had maintained a joint brokerage account with Company. Prior to his death, Decedent, who had a terminal illness, intended that Company transfer the account into his own name in order to insure that, upon his death, there would be sufficient assets in his gross estate to fully fund Trust. However, upon Decedent's death, the brokerage account was still held in the names of Decedent and Spouse as joint tenants with right of survivorship.

Decedent's estate tax return was filed on Date 2. The gross estate reported was $w consisting of: two assets with a total value of $x, an IRA of which Spouse was the designated beneficiary; and property Decedent and Spouse owned as joint tenants (including the brokerage account with Company). One-half the value of these jointly owned assets was included in Decedent's gross estate under § 2040(b), and qualified for the estate tax marital deduction under § 2056(a).

The estate tax on Decedent's estate, before allowance of the unified credit allowable under § 2010, was less than $192,800. If ownership of the account had been transferred into Decedent's name only, the account would have been included in Decedent's probate estate and would have been available to fully fund Trust, which was designed to take advantage of the maximum available unified credit.

Spouse asserted that Company was responsible for the failure to convert Decedent's and Spouse's Company joint account into an account solely owned by Decedent, and that because of this failure, Decedent's probate estate did not include sufficient property to fully fund Trust and take full advantage of the unified credit. After negotiations, a settlement agreement was proposed (Agreement) pursuant to which Spouse will convey to Company $y (the additional amount that would be required to fully fund Trust in order to take full advantage of the unified credit) and Company will then transfer $y to Trust.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Under § 2010(a) prior to amendment by the Taxpayer Relief Act of 1997, a credit of $192,800 was allowed against the estate tax imposed by § 2001. In general, the $192,800 credit has the effect of shielding $600,000 of property includible in the taxable estate from estate tax.

Section 2501 imposes a gift tax on any transfer by gift. Under § 25.2511-1(a), the gift tax applies whether the gift is direct or indirect. Sections 25.2511-1(h)(2) and (3) provide illustrations of indirect gifts. For example, § 25.2511-1(h)(2) provides that

the transfer of property to B if there is imposed on B the obligation of paying a commensurate annuity to C is a gift to C. Section 2702 provides special rules for determining the value of a gift where the donor transfers property in trust and retains an interest in the transferred property.

In the present case, Spouse proposes to transfer $y, the additional amount that would be required to fully fund Trust to take advantage of the maximum unified credit available to Decedent's estate, to Company and Company will then transfer these funds to Trust. However, under these circumstances, the $y distributed to Trust, would not have passed from the Decedent to the Trust. Rather, the transaction is properly viewed as a transfer from Spouse to Trust, for federal gift, estate and generation-skipping transfer tax purposes. See § 25.2511-1(h)(2). Accordingly, in computing the Decedent's estate tax liability, only the estate tax generated by the inclusion of $x (the amount passing from Decedent to Trust under the terms of Decedent's will) is eligible for the § 2010 credit.

Accordingly, we conclude that under the proposed settlement between Spouse and Company, the $y distributed to Trust will not be treated as passing from the Decedent for purposes of the computation of Decedent's estate tax liability, including utilization of the unified credit under § 2010. Instead, Spouse will be treated as making a transfer to Trust for federal gift, estate and generation-skipping transfer tax purposes.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provision of the Code or any other provision of the Code.

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 Masnik
Branch Chief, Branch 4

Enclosure
Copy of letter for section 6110 purposes