

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-122544-01/CC:PSI:B4

August 22, 2001

Taxpayer's Name:

Taxpayer's Identification No:
Date of Death:
Date of Conference:

LEGEND:

Transferor -
Father -
Spouse -
Son -
Daughter 1 -
Daughter 2 -
Daughter 3 -
Date 1 -
Date 2 -
Date 3 -
Date 4 -

ISSUE:

Whether, for purposes of § 2651 of the Internal Revenue Code, Daughter 2 and Daughter 3 are assigned to the second generation below the generation of the transferor.

CONCLUSION:

For purposes of § 2651, Daughter 2 and Daughter 3 are assigned to the second generation below the generation of the transferor.

FACTS:

Transferor was born Date 1. After Transferor was born, his Father married his

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second wife, Spouse. When Spouse married Father, she had one child, Son. Father never adopted Son.

During his life, Son had three daughters, Daughter 1, Daughter 2, and Daughter 3. Daughter 2 was born on Date 2, and Daughter 3 was born on Date 3.

Transferor died on Date 4. In his will, Transferor bequeathed \$1,000,000 in trust for each of Son's three daughters. Each daughter has a life estate in her trust and, at a respective daughter's death, the trust corpus will pass to her issue. Transferor was more than 37 ½ years older than Daughter 2 and Daughter 3.

LAW AND ANALYSIS:

Section 2601 provides that a tax is imposed on every generation-skipping transfer.

Section 2612(c)(1) provides that the term "direct skip" means a transfer subject to a tax imposed by Chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a)(2)(A) provides that the term "skip person" means a trust if all interests are held by skip persons.

Section 2651(a) provides that, for purposes of Chapter 13, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in § 2651.

Section 2651(b)(1) provides that an individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation that results from comparing the number of generations between the grandparent and the individual with the number of generations between the grandparent and the transferor.

Section 2651(b)(2) provides that an individual who is a lineal descendant of a grandparent of a spouse (or former spouse) of the transferor (other than the spouse) shall be assigned to that generation that results from comparing the number of generations between the grandparent and the individual with the number of generations between the grandparent and the spouse.

Section 2651(b)(3)(A) provides that a relationship by legal adoption shall be treated as a relationship by blood.

Section 2651(c) provides that an individual who has been married at any time to the transferor shall be assigned to the transferor's generation and an individual who has been married at any time to an individual described in § 2651(b) shall be assigned to the generation of the individual so described.

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Section 2651(d) provides that an individual who is not assigned to a generation by reason of the § 2651(b) and § 2651(c) shall be assigned to a generation on the basis of the date of the individual's birth with -- (1) an individual born not more than 12 ½ years after the date of birth of the transferor assigned to the transferor's generation, (2) an individual born more than 12 ½ years but not more than 37 ½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and (3) similar rules for a new generation every 25 years.

In the present case, Transferor died on Date 4, and his will established a trust for each of Son's daughters and their respective issue. Transferor was more than 37 ½ years older than Daughter 2 and Daughter 3. Father did not adopt Son, and therefore, § 2651(b)(1) does not assign a generation to the daughters because they are not lineal descendants of a grandparent of Transferor. Likewise, § 2651(b)(2) does not assign a generation to the daughters because they are not lineal descendants of the grandparent of Transferor's spouse. This rule focuses on the transferor's spouse, and Spouse was married to Transferor's father. In addition, no generation assignment occurs under § 2651(c) because the daughters were not married to Transferor or to any individual described under § 2651(b). Accordingly, because there is no assignment under §§ 2651(b) or 2651(c), a generation assignment must be based on the age differential between the transferor and the individual. See § 2651(d). Thus, Daughter 2 and Daughter 3 are assigned to a generation that is two generations below the generation of Transferor because the age differential between Transferor and Daughter 2 and Daughter 3 exceeds 37 ½ years.

CAVEAT:

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

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