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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person:

Telephone Number:

In Reference to:
CC:DOM:P&SI:Br4/PLR 118793-98

Date:
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Re:

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Grantors =
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Dear

On September 30, 1993, the Internal Revenue Service issued a letter ruling to the above captioned Grantors under control no. TR-31-418-93 (PLR 9352017).

Grantors requested rulings concerning the application of §§ 671, 2056, 2511, and 2702 of the Internal Revenue Code to six previously created and funded grantor retained annuity trusts. Ruling No. 6 involved whether the Grantor's retention of the right to revoke a spousal annuity payable to the Grantor's spouse constituted the retention of a qualified annuity interest for purposes of §§ 2702 and 25.2702-2(a)(5) of the Gift Tax Regulations. Ruling No. 8 involved a request for a computation of the actuarial values of the retained qualified annuity interests with respect to each trust.

Each Grantor created three trusts for a specified term of years. Under the terms of each trust, the Grantor is to receive an annuity payable for the term of the trust or until the Grantor's prior death. The trusts provide that if the Grantor dies prior to the expiration of the term of the trust, survived by the spouse, then the annuity is to be paid to the Grantor's spouse or the spouse's estate for the balance of the term. Each Grantor retained a testamentary power of appointment which could be exercised to revoke the Grantor's spouse's annuity interest.

Regarding Ruling No. 6, the ruling letter implies that the revocable spousal annuity payable to the Grantor's spouse constituted a qualified annuity interest for purposes of § 25.2702-2(a)(5). The ruling further concludes that the revocable spousal interest was an incomplete gift for gift tax purposes. Regarding Ruling No. 8, the value of the Grantor's retained qualified annuity interest was computed as including the value of the revocable spousal annuity. We have determined that, as discussed below, to the extent Ruling No. 6 implies that the revocable spousal annuity is a "qualified interest" for

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purposes of § 25.2702-2(a)(5), the ruling was erroneous. In view of this conclusion, the computations of the Grantors' retained interests in Ruling No. 8 were also erroneous. Therefore, in accordance with § 12.04 of Rev. Proc. 98-1, 1998-1 I.R.B. 7, 47, these rulings are hereby modified.

Section 25.2702-2(a)(5) provides that the term "qualified interest," for purposes of § 2702(b), means a qualified annuity interest, a qualified unitrust interest, or a qualified remainder interest. Further, the retention of a power to revoke a qualified annuity interest (or unitrust interest) of the transferor's spouse will be treated as the retention by the grantor of a qualified annuity interest (or unitrust interest).

We have concluded that the revocable spousal interests provided under the Grantors' trusts were not qualified interests. See, § 25.2702-3(e), Examples 5 and 6; § 25.2702-3(d)(3); Compare, § 25.2702-2(d)(1), Example 7. Accordingly, Ruling No. 6 is modified to conclude that the retention by the Grantors of the power to revoke the spousal interests provided under their respective trusts did not consistute the retention of "qualified interests" for purposes of § 2702(b).

Based on the above, in Ruling No. 8, the present values of the Grantors' retained qualified annuity interests are incorrectly computed. Rather, the present value of each retained qualified annuity interest is the present value of the right to receive the specified annuity for the stated term of the respective trust, or until the prior death of the Grantor. Ruling No. 8 is modified accordingly.

Section 12.04 of Rev. Proc. 98-1, provides that a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all open years under the statute of limitations, unless the Service uses its discretionary authority under § 7805(b)(8) to limit the retroactive effect of the revocation or modification. Section 12.05 of the revenue procedure provides that, except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer to whom the letter ruling was issued provided that, inter alia, the taxpayer relied in good faith on the letter ruling and revoking or modifying the letter ruling would be to the taxpayer's detriment. Section 12.11 prescribes the procedures for requesting relief under § 7805(b)(8).

220

Section 6110(j)(3) provides that this ruling may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

(signed) George L. Masnik
By_____
George Masnik
Chief, Branch 4

Enclosures
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221