Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:PSI:B04
PLR-110810-98

Date: JANUARY 28, 2008

Re:

Legend

A	=
B	=
C	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Policy 1	=
Policy 2	=
Agreement	=

Dear :

This is in response to your letter dated December 13, 2007 and prior correspondence, submitted by your authorized representatives in which you requested rulings concerning the federal estate and gift tax consequences of the ownership by a trust of two life insurance policies subject to a split-dollar life insurance agreement.

On Date 1, A, established an irrevocable trust, the Trust, for the benefit of his issue. On Date 2, A purchased and paid the initial premiums on Policy 1 and Policy 2, two second to die life insurance policies on the lives of A and his spouse, B. The Trust was designated owner and beneficiary of the policies. The trustee of the Trust is A's child, C. In general, under the terms of the Trust, any contribution to the Trust may be

withdrawn by the Trust beneficiaries, subject to certain limitations. Generally, the withdrawal right lapses on the last day of the year in which the contribution was made. During A's or B's life, the trustee is authorized to distribute some or all of the trust income or principal for the health, maintenance and support of A's issue.

After the death of the survivor of A and B, the Trust is to be divided (after providing a reserve for any outstanding withdrawal rights) into equal shares for each child of A who survives A and B or, if he or she did not so survive, had issue who survive A and B. The separate share of a child of A who did not survive A and B will be divided into separate shares per stirpes among each of the descendants of that deceased child who survive A and B. The separate shares will be held in trust for the designated beneficiaries.

On Date 3, A, B, and the trustee entered into a collateral assignment split-dollar life insurance agreement ("Agreement"). Under the Agreement, the Trust is designated the owner of Policy 1 and Policy 2. The owner may exercise all rights of ownership except the right of the collateral assignees (A and B) upon termination of the Agreement to be repaid the cash surrender value of the policies prior to termination (the "amount due.")

While A and B are living, the Trust is obligated to pay that portion of the annual premiums equal to the economic benefit cost of current life insurance protection on the joint lives (calculated by reference to the U.S. Life Table 38). During the life of the survivor of A or B, the Trust will pay that portion of the annual premiums on each policy equal to the lesser of: (1) the applicable amount provided in the P.S. 58 tables set forth in Rev. Rul. 55-747, 1955-2 C.B. 228; or (2) the insurer's current published premium rate for annually renewable term insurance generally available for standard risks in accordance with Rev. Rul. 66-110, 1966-1 C.B. 12. A and B will pay the remaining portion of the annual premiums. For convenience, A and B may pay the entire premium, and if so, the Trust is required to reimburse A and B for the Trust's share of the premiums unless A and B waive such right to reimbursement as a gift to the Trust.

Under the Agreement, upon the death of the survivor of A and B, the Agreement terminates and the survivor's estate is to receive a portion of the proceeds of each policy equal to the cash surrender value of the policies prior to termination ("the amount due.") The Trust is the designated beneficiary of the balance of the insurance proceeds.

Prior to the death of the survivor of A and B, the Agreement may be terminated unilaterally by either A and B, or the trustee, if the value of the assets held by the Trust (excluding the value of the policies but including the loan value of the policies) equals or exceeds the amount due immediately before termination. The parties may also

terminate the Agreement by mutual consent. In addition, the Agreement will also terminate upon the occurrence of any of the following events: the personal bankruptcy of A and B, the failure of the trustee to reimburse A and B for premium payments, or the failure of A and B to pay premiums. Within 30 days of termination, the Trust must pay A and B the amount due. If the Trust timely pays the amount due, the Collateral Assignment (discussed below) must be released. If the amount due is not paid, then A and B have the right to surrender the policies and receive the amount due from the proceeds.

To secure A and B's and their respective estate's interest in the policies and its proceeds, the trustee executed a Collateral Assignment pursuant to which the trustee assigned Policy 1 and Policy 2 to A and B. However, under the terms of the Collateral Assignment, the Trustee specifically retains all rights of ownership in the Policies subject to the right of A and B, or the estate of the survivor to receive the amount due on termination of the Agreement. The rights expressly retained by the trustee include, but are not limited to the right to designate and change beneficiaries; the right to elect optional modes of settlement; the right to surrender, cancel, or assign the policies, or obtain policy loans.

It is further represented that the Agreement has not been modified in any manner since Date 3.

You have asked that we rule as follows:

1. The payment by A and B of the premiums pursuant to the Agreement will not result in a gift or a deemed gift to the Trust by A and B under §§ 2501 and 2511.

2. The insurance proceeds payable to the Trust will not be includible under § 2042 in the gross estate of either A or B.

ISSUE 1

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 2512(b) provides that, where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration is deemed a gift.

Section 25.2511-2(b) of the Gift Tax Regulations provides that, as to any property, or part thereof or interest therein, of which the donor has so parted with

dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another, the gift is complete. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

Rev. Rul. 64-328, 1964-2 C.B. 11, considers a "split-dollar" arrangement, in which the employer pays the portion of the premiums equal to the increases in the cash surrender value and the employee pays the balance, if any, of the premiums. From the proceeds payable upon the employee's death, the employer receives an amount equal to the greater of the cash surrender value or funds it has provided, with the beneficiary receiving the balance. The ruling concludes that the value of the insurance protection determined based on the table of one-year premium rates set forth in Rev. Rul. 55-747, 1955-2 C. B. 228 (“P.S. 58 rates”) in excess of the premiums paid by the employee must be included in the employee's gross income. The ruling further states that the same income tax result follows if the transaction is cast in some other form that results in a similar benefit to the employee.

Notice 2001-10, 2001-1 C.B. 459, revoked Rev. Rul. 55-747.

Notice 2002-8, 2002-1 C.B. 398, revoked Notice 2001-10. Part III.1 of Notice 2002-8 provides that Rev. Rul. 55-747 remains revoked, as provided in and with the transitional relief for 2001 described in Part IV.B.1 of Notice 2001-10. Part III.1 also provides that an employer and employee may continue to use the P.S. 58 rates in Rev. Rul. 55-747 to determine the value of current life insurance protection provided to the employee under a split-dollar life insurance arrangement entered into before January 28, 2002, if a contractual arrangement provides that the P.S. 58 rates will be so used.

Notice 2002-8, Part III.2, provides that in the case of split-dollar life insurance arrangements entered into before the effective date of future guidance, taxpayers may use the premium rates in Table 2001 to determine the value of current life insurance protection on a single life that is provided under a split-dollar life insurance arrangement. Notice 2002-8 also provides that taxpayers should make appropriate adjustments to the Table 2001 rates if the life insurance protection covers more than one life.

Notice 2002-8, Part III.3, provides that for arrangements entered into before the effective date of future guidance (and before January 29, 2002), taxpayers may, to the extent provided by Rev. Rul. 66-110, as amplified by Rev. Rul. 67-154, 1967-1 C.B. 11, continue to determine the value of current life insurance protection by using the insurer’s lower published premium rates that are available to all standard risks for initial issue one-year term insurance.

Notice 2002-8, Part IV.2, provides generally that, for split-dollar life insurance arrangements entered into before the date of publication of final regulations, in cases where the value of current life insurance protection is treated as an economic benefit provided by a sponsor to a benefited person under a split-dollar life insurance arrangement, the Service will not treat the arrangement as having been terminated (and thus will not assert that there has been a transfer of property to the benefited person by reason of termination of the arrangement) for so long as the parties to the arrangement continue to treat and report the value of the life insurance protection as an economic benefit provided to the benefited person.

Final regulations regarding the income, employment and gift taxation of split dollar life insurance arrangements were promulgated in T.D. 9092, 68 F.R. 54336 (September 17, 2003), 2003-2 C.B. 1055. These regulations apply to any split-dollar life insurance arrangement (as defined in the regulations) entered into after September 17, 2003. The regulations also provide that if an arrangement is entered into on or before September 17, 2003, and is materially modified after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification. Section 1.61-22(j).

Rev. Rul. 2003-105, 2003-2 C.B. 696, declared as obsolete Rev. Rul. 79-50, 1979-1 C.B. 139, Rev. Rul. 78-420, 1978-2 C.B. 467, Rev. Rul. 66-110 (except as provided in Part III.3 of Notice 2002-8 and Notice 2002-59, 2002-2 C.B. 481), and Rev. Rul. 64-328. However, Rev. Rul. 2003-105 also provides that in the case of any split-dollar life insurance arrangement entered into on or before September 17, 2003, taxpayers may continue to rely on these revenue rulings to the extent described in Notice 2002-8, but only if the arrangement is not materially modified after September 17, 2003.

In the present case, under the terms of the Agreement, the Trust will pay the portion of the premium equal to the cost of current life insurance protection. A and B will pay the balance of the premium, and A and/or B (or the estate of the survivor) will be entitled to receive an amount equal to the policy cash surrender value on termination of the Agreement, or the death of the survivor. We conclude that the payment of the premiums by A and B, pursuant to the terms of the Agreement, will not result in a gift by A and B under section 2511, provided that the amounts paid by the Trust for the life insurance benefit that the Trust receives under the Agreement is at least equal to the amount prescribed under Rev. Rul. 64-328, Rev. Rul. 66-110, and Notice 2002-8. We also conclude that, if some or all of the cash surrender value is used (either directly, or indirectly through loans) to fund the Trust's obligation to pay premiums, A and B will be treated as making a gift at that time. We express no opinion concerning the federal gift tax consequences between A and B of the second-to-die policies.

Ruling Request 2

Section 2042(1) provides that the value of a decedent's gross estate shall include the proceeds of insurance policies on the decedent's life receivable by the decedent's estate.

Section 2042(2) provides that the value of a decedent's gross estate shall include the proceeds of all life insurance policies on the decedent's life receivable by beneficiaries other than the executor of the decedent's estate, to the extent that the decedent possessed at his death any incidents of ownership exercisable either alone or in conjunction with any other person. An incident of ownership includes a reversionary interest arising by the express terms of the instrument or by operation of law only if the value of such reversionary interest exceeds 5 percent of the value of the policy immediately before the death of the decedent.

Section 20.2042-1(c)(2) of the Estate Tax Regulations provides that "incidents of ownership" is not limited in its meaning to ownership of a policy in the technical legal sense. Generally, the term has reference to the right of the insured or his estate to the economic benefits of the policy. Thus, it includes power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy.

In the present case, under the Agreement and the Collateral Assignment, neither A nor B will hold any incidents of ownership in Policies 1 and 2. As noted above, all incidents of ownership in the policies, including the power to change the beneficiary, the power to surrender or cancel the policy, the power to assign the policy or to revoke an assignment, and the power to pledge the policy for a loan or to obtain from the insurer a loan against the surrender value of the policy are vested in the trustee of the Trust. Accordingly, we conclude that the proceeds of the policy payable to the Trust will not be included in the gross estate of the second to die of A and B under section 2042(2). The portion of the proceeds payable to the estate of the survivor of A and B will be includible under section 2042(1). See, e.g., Rev. Rul. 79-129, 1979-1 C.B. 306.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing transactions under any other provisions of the Code or regulations.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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

Sincerely,

George Masnik
Branch Chief, Branch 4
Office of Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes