

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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RE:

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March 9, 2018

LEGEND

Taxpayer =
State A =
State B =
Date 1 =
Date 2 =
X =
Country =
Museums =
Spouse =
X =
Y =

Dear :

This letter responds to your authorized representative’s letter of September 14, 2017, regarding the gift tax treatment of proposed transfers of artwork pursuant to a Deed of Transfer.

FACTS

The facts and representations submitted are summarized as follows. Taxpayer is a United States citizen and resident of State A. Taxpayer currently owns a collection of artwork (“artwork”) that Taxpayer and Spouse collected during their lifetime. The artwork is situated in Taxpayer’s primary residence in State A and Taxpayer’s

secondary residences in State B and Country. Spouse died on Date 1. Taxpayer is now the sole owner of the artwork.

On Date 2, prior to Spouse's death, Taxpayer and Spouse entered into a Deed of Transfer ("DOT") with two museums ("Museums") located in Country. Under the DOT, Taxpayer and Spouse agreed to donate the artwork to Museums, with possession of the artwork to transfer to Museums on the death of the second of Taxpayer and Spouse. Museums desired to accept the artwork to effectuate Taxpayer and Spouse's donative purpose and enhance its collection of artwork. The estimated value of the artwork at the time of the execution of the DOT was \$x.

The DOT, as it currently applies to Taxpayer as the surviving spouse and sole owner of the artwork, provides that Taxpayer shall grant to the Museums the legal title, naked ownership and remainder interest in and to the artwork. The DOT further provides that Taxpayer shall expressly reserve for her benefit a life interest and usufruct in and to the artwork. The life interest and usufruct shall automatically expire on the death of Taxpayer.

Section 3.1 of the DOT provides that the parties intend for the transfer of artwork to not qualify as a completed inter vivos gift for United States gift tax purposes on the basis that Taxpayer is not releasing dominion and control over the artwork until her death. If Taxpayer receives a favorable ruling on the gift tax treatment, the donation under the DOT is deemed to take effect as of the date of the favorable ruling. If Taxpayer does not obtain a favorable ruling, then the DOT does not come into force.

Section 3.2 imposes certain conditions subsequent. If any of the conditions subsequent are not satisfied, Taxpayer would have the option to revoke the transfer of the artwork. The conditions subsequent, which apply during the life of Taxpayer are: (i) Museums must comply with the requirements regarding the housing, display and exhibition of the artwork as set forth in the DOT (applicable to artwork delivered to Museums prior to Taxpayer's death pursuant to Section 4.11); (ii) the X law principles currently governing in Country must not be replaced by Y law; (iii) Museums must not become privately owned; and (iv) the tax laws of Country must not change to cause Taxpayer to become subject to taxation in Country during Taxpayer's life or upon death in connection with the transfer of the artwork.

Section 4.11 provides that Taxpayer may renounce and waive her life interest and usufruct by delivery of some or all of the artwork donated to Museums. During the period of Taxpayer's life interest and usufruct, Taxpayer shall retain physical possession of the artwork. However, Taxpayer may not sell or otherwise dispose of any of the artwork.

Section 4.13 provides that upon the termination of Taxpayer's life interest and usufruct, the artwork will be made readily available by Taxpayer or her representatives to

Museums. Section 4.2 provides that the artwork will become integrated into and form part of the public domain of Country and thus inalienable and exempt from seizure under the laws of Country. Section 4.2 further provides that upon the acquisition by Museums, the artwork is required to be installed in a special area of Museums' premises specifically dedicated to the Taxpayer's and Spouse's collection.

Pursuant to Section 6.3 the DOT is governed by and construed in accordance with the laws of Country, provided however, any conflict in interpretation or implementation of any provisions of the DOT will be governed under the laws of the United States.

You have requested that the transfer by Taxpayer of interests in the artwork and the agreement by Taxpayer to transfer, upon her death, the balance of the interest in the artwork, as contemplated and defined by the DOT, would not be treated for federal gift tax purposes as a completed gift of any portion of the artwork by Taxpayer upon receipt of a favorable ruling.

LAW AND ANALYSIS

Section 2501 of the Internal Revenue Code (Code) imposes a tax for each calendar year on the transfer of property by gift during the calendar year.

Section 2511(a) provides, in part, 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 and tangible or intangible.

Section 25.2511-1(e) of the Gift Tax Regulations provides that if a donor transfers by gift less than his entire interest in property, the gift tax is applicable to the interest transferred. The tax is applicable, for example, to the transfer of an undivided half interest in property, or to the transfer of a life estate when the grantor retains the remainder interest, or vice versa.

Section 25.2511-1(g) provides that the application of the gift tax is based on the objective facts and circumstances under which it is made, rather than on the subjective motives of the donor.

Section 25.2511-2(b) 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 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.

As § 25.2511-2(b) provides, the question of whether a transfer is a completed gift, and thus subject to gift tax, turns on whether the settlor has abandoned sufficient dominion and control over the property transferred to put it beyond recall. See *Burnet v. Guggenheim*, 288 U.S. 280 (1933); *Estate of Sanford v. Commissioner*, 308 U.S. 39 (1939); and *Smith v. Shaughnessy*, 318 U.S. 176 (1943). It is settled that the donor's retention of an interest that is dependent upon the occurrence of an event beyond the donor's control does not amount to dominion and control over the property and will not cause the transfer to be incomplete. See *Smith v. Shaughnessy*, 318 U.S. at 181; *Robinette v. Helvering*, 318 U.S. 184, 187 (1943); *Estate of Kolb v. Commissioner*, 5 T.C. 588, 593 (1945); *Mack v. Commissioner*, 39 B.T.A. 220, 229 (1939).

In the present case, upon the effective date of the DOT, Taxpayer will transfer the legal title, naked ownership and remainder interest of artwork to Museums while retaining a life estate and usufruct. Under Section 4.1¹ of the DOT, during the period of the life interest and usufruct, Taxpayer may not sell or otherwise dispose of any of the artwork. Taxpayer retains no power to change the disposition of the artwork to Museums and is expressly barred from doing so under the DOT. Although the transfer of the artwork to Museums is subject to several conditions subsequent, the conditions that could cause a revocation of the transfer are not dependent on any act of Taxpayer. Accordingly, we conclude that Taxpayer's grant to the Museums of the legal title, naked ownership and remainder interest in and to the artwork, as defined by the DOT, would be a completed gift for gift tax purposes, but for the condition precedent of receipt of a favorable ruling on the gift tax treatment.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Karlene M. Lesho

Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: