

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-141837-12

Date:

March 27, 2013

Taxpayer =
Decedent =
Family =
Trust
Date 1 =
Date 2 =

Dear :

This responds to your submission dated September 18, 2012, and subsequent correspondence, requesting a ruling under § 2042 of the Internal Revenue Code with respect to the following transaction.

Over a period of years, Taxpayer's spouse, Decedent, purchased several life insurance policies naming Taxpayer as the insured and Decedent's estate as the beneficiary. It is represented that Taxpayer paid none of the premiums on the policies and, as well, that Taxpayer anticipates that no further premiums will be due on the policies.

Decedent died on Date 1. Under Decedent's will ownership of the policies passed to Family Trust. Under the terms of Family Trust, income and principal is distributable to Taxpayer and Decedent's descendants in the discretion of the trustee. The remainder is payable to such persons, other than Taxpayer, Taxpayer's estate, Taxpayer's creditors, or the creditors of Taxpayer's estate, as Taxpayer shall appoint by will, and in default of appointment, to certain takers in default. Taxpayer is named the trustee of Family Trust, as well as the protector of Family Trust, with the power to remove and replace trustees. As trustee, Taxpayer possessed the incidents of ownership in the policies.

On Date 2, pursuant to its terms, Family Trust was divided into two trusts, Family Trust 1 and Family Trust 2. Family Trust 1 was funded with the insurance policies, while Family Trust 2 was funded with the remaining assets. Concurrent with the division of Family Trust, Taxpayer relinquished his roles as trustee and protector of Family Trust 1, his ability to be reappointed as trustee of Family Trust 1, and his power of appointment over the assets of Family Trust 1. Taxpayer retained his beneficial interest in Family Trust 1 as a permissible distributee of trust income and principal.

Section 2042(2) of the Code provides, in pertinent part, that the value of the gross estate includes the value of all property to the extent of the amount receivable as insurance under policies on the life of the decedent by beneficiaries (other than the executor), with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person.

Section 2035(a) provides that if (1) the decedent transferred an interest in any property, or relinquished a power with respect to any property, during the three-year period ending on the date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038, or 2042 if the transferred interest or relinquished power had been retained by the decedent on the date of death, the value of the gross estate includes the value of any property (or interest therein) which would have been so included.

Section 20.2042-1(a)(2) of the Estate Tax Regulations provides, in pertinent part, that proceeds of life insurance which are not includable in the gross estate under § 2042 may, depending upon the facts of the particular case, be includable under some other section of Part III of Subchapter A of Chapter 11, defining the gross estate. For example, if the decedent possessed incidents of ownership in an insurance policy on his life but gratuitously transferred all rights in the policy in contemplation of death, the proceeds would be includable under § 2035.

Section 20.2042-1(c)(1) provides that § 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent's life not receivable by or for the benefit of the estate if the decedent possessed at the date of his death any of the incidents of ownership in the policy, exercisable either alone or in conjunction with any other person. However, if the decedent did not possess any of such incidents of ownership at the time of his death nor transfer them in contemplation of death, no part of the proceeds would be includible in his gross estate under § 2042. Thus, if the decedent owned a policy of insurance on his life and, four years before his death, irrevocably assigned his entire interest in the policy to his wife retaining no reversionary interest therein, the proceeds of the policy would not be includible in his gross estate under § 2042.

Section 20.2042-1(c)(2) provides that the term "incidents of ownership" is not limited in its meaning to ownership of the policy in the technical legal sense. Generally speaking, the term has reference to the right of the insured or his estate to the economic benefits

of the policy. Thus, it includes the 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.

Section 20.2042-1(c)(4) provides, in pertinent part, that a decedent is considered to have an "incident of ownership" in an insurance policy on his life held in trust if, under the terms of the policy, the decedent (either alone or in conjunction with another person or persons) has the power (as trustee or otherwise) to change the beneficial ownership in the policy or its proceeds, or the time or manner of enjoyment thereof, even though the decedent has no beneficial interest in the trust.

Rev. Rul. 84-179, 1984-2 C.B. 195, considers whether, for purposes of § 2042(2) and § 20.2042-1(c)(4), a decedent possessed incidents of ownership in a life insurance policy on his life if the decedent transferred all incidents of ownership to his spouse. In the ruling, the decedent's spouse designated their adult child as the policy beneficiary. Subsequently, the spouse died and under her will a residuary trust was established for the benefit of the child. The decedent was designated the trustee of this trust. The insurance policy on the decedent's life was part of the residuary estate, and passed to the residuary trust. As trustee, the decedent had broad discretionary powers in the management of the trust property and the power to distribute or accumulate income. Under the terms of the policy, the owner could elect to have the proceeds made payable according to various plans, use the loan value to pay the premiums, borrow on the policy, assign or pledge the policy, and elect to receive annual dividends. The will precluded the decedent from exercising these powers for the decedent's own benefit. The decedent paid the premiums on the policy out of other trust property and was still serving as trustee when he died.

Citing the legislative history of § 2042(2), the ruling concludes that a decedent will not be deemed to have incidents of ownership over an insurance policy on the decedent's life where the decedent's powers are held in a fiduciary capacity, are not exercisable for the decedent's personal benefit, where the decedent did not transfer the policy or any of the consideration for purchasing or maintaining the policy to the trust from personal assets, and where the devolution of the powers on the decedent was not part of a prearranged plan involving the participation of the decedent. Further, the ruling continues, the decedent will be deemed to have incidents of ownership where the decedent's powers are held in a fiduciary capacity and the decedent has transferred the policy or any of the consideration for purchasing and maintaining the policy to the trust. Moreover, where the decedent's powers could have been exercised for the decedent's benefit, they will constitute incidents of ownership in the policy, without regard to how those powers were acquired and without consideration of whether the decedent transferred property to the trust. Thus, if the decedent reacquires powers over insurance policies in an individual (non-fiduciary) capacity, the powers will constitute incidents of ownership even though the decedent is a transferee.

Here, prior to the Date 2 transaction, Family Trust held policies of insurance on Taxpayer's life. Under the terms of Decedent's will, Taxpayer possessed trustee powers over the Family Trust assets, a beneficial interest in Family Trust, and a testamentary power of appointment over the Family Trust assets. Taxpayer could exercise in a fiduciary capacity the trustee powers over the incidents of ownership in the policies of insurance on Taxpayer's life for Taxpayer's own benefit, and could exercise in his individual capacity the power of appointment over the proceeds of the policies. On these facts, both the fiduciary powers and individually held powers constitute incidents of ownership in the policies, without regard to how those powers were acquired and without consideration of whether Taxpayer transferred property to Family Trust. Section 20.2042-1(c)(4). After the Date 2 transactions, however, with regard to Family Trust 1, Taxpayer held only a beneficial interest as a permissible distributee of income and corpus, but no powers over the policies or their proceeds, and thus, no incidents of ownership for purposes of § 2042(2). Assuming that Taxpayer survives the three-year period of § 2035, the proceeds of the policies will not be includible in Taxpayer's gross estate. Section 20.2042-1(c)(1).

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 taxpayers 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 taxpayers 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,

LESLIE H. FINLOW
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes