



TaxNewsFlash

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U.S. Tax Court: No gift tax liability following termination of marital trusts

The U.S. Tax Court today held that an estate was not liable for gift tax under section 2501 following the termination of marital trusts, distribution of all assets to the surviving spouse, and subsequent sale by the surviving spouse of shares previously held by the trusts to her children, as no gratuitous transfer was made. The court also held that the estate was not liable for gift tax under section 2519 because following termination of the marital trusts, the surviving spouse's qualifying income interest for life in qualified terminable interest property (QTIP) terminated.

The case is: *Estate of Anenberg v. Commissioner*, 162 T.C. No. 9 (May 20, 2024). Read the Tax Court's [opinion](#)

Summary

S and her husband D established a family trust that included shares in their company (C). After D's death in 2008, the property held in the family trust passed to marital trusts in which S held an income interest for life and D's children held contingent remainder interests. A QTIP election was made on D's estate tax return for the property passing to the marital trusts.

In March 2012, with the consent of D's children and S, a state court terminated the marital trusts, and all of the underlying property held by those trusts was distributed to S. After S made an intervening gift of a portion of the C shares to D's children in August 2012, S sold the remaining C shares from the marital trusts to D's children and grandchildren in September 2012 for interest-bearing promissory notes for the purchase price of the C shares.

The IRS examined S's 2012 gift tax return and issued a Notice of Deficiency to S's estate determining that the termination of the marital trusts and sale of the C shares for promissory notes was a disposition of S's qualifying income interest for life in QTIP under section 2519 and that the estate was liable for gift tax on the value of the QTIP minus the value of S's qualifying income interest for life.

The estate filed a Motion for Partial Summary Judgment maintaining that the termination of the marital trusts and distribution of QTIP assets to S did not result in a taxable gift and neither did S's sale of the C shares in exchange for promissory notes because she received full and adequate consideration.

The Tax Court held in favor of the estate, stating that assuming there was a transfer of property under section 2519 when the marital trusts were terminated, the estate was not liable for gift tax under section 2501 because S received back the interests in property that she was treated as holding and transferring under sections 2056(b)(7)(A) and 2519 and made no gratuitous transfer, as required by section 2501.

The Tax Court also held that the estate was not liable for gift tax on the sale of C shares for promissory notes because after the termination of the marital trusts, S's qualifying income interest for life in QTIP terminated and section 2519 did not apply to the sale.

KPMG observation

QTIP trusts and section 2519 issues appear to be an area of focus for the IRS. There are reportedly several section 2519 cases working their way through the courts in addition to a CCA and a PLR that have been issued in recent years.

The type of planning described in the *Anenberg* case may be particularly relevant now in light of the sunset of the enhanced lifetime exemption scheduled for the end of 2025. In some cases, the QTIP trust might be a good source of assets that could use up any remaining gift exemption of the surviving spouse since the value of the QTIP trust will otherwise be included in his or her gross estate.

In light of CCA 202352018, where the IRS took the position that the consent of beneficiaries to a trust modification allowing for income tax reimbursements to a grantor was a gift by the beneficiaries, it is interesting that they apparently did not try to argue something similar as a fallback argument in the *Anenberg* case. Whether the court would ultimately have been receptive to that argument is unclear, but they at least open the door to it when they indicate in a footnote that they “express no view on whether the other beneficiaries of the Marital Trust could be treated as making a gift to [the surviving spouse] for gift tax purposes.”

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