



# TaxNewsFlash

United States

No. 2024-360  
September 18, 2024

## U.S. Tax Court: Commutation of marital trust results in gifts to surviving spouse of remainder interests in trust

The U.S. Tax Court yesterday held (following its prior decision in *Estate of Anenberg v. Commissioner*, 162 T.C. No. 9 (May 20, 2024) (read [TaxNewsFlash](#))) that commutation of a qualified terminable interest property (QTIP) marital trust, in which the surviving spouse had an income interest and two children had remainder interests, to other trusts for the benefit of the children in exchange for promissory notes payable to the surviving spouse, did not result in a gift by the surviving spouse to the children under section 2501, but did result in gifts from the children to the surviving spouse of the remainder interests in the marital trust under section 2511.

The case is: *McDougall v. Commissioner*, 163 T.C. No. 5 (September 17, 2024). Read the Tax Court's [opinion](#)

### Summary

Upon decedent's death in 2011, the residuary of her estate passed to a marital trust in which her husband (surviving spouse), had an income interest and their two children had remainder interests. A QTIP election was made on decedent's estate tax return for property passing to the marital trust.

In 2016, the surviving spouse and two children entered into an agreement under which the marital trust was commuted and all its assets were distributed to the surviving spouse. The surviving spouse promptly sold some of the assets he received from the marital trust to other trusts established for the benefit of the two children and their children, in exchange for promissory notes.

The surviving spouse and each child separately filed gift tax returns for 2016 and reported that those transactions resulted in offsetting reciprocal gifts and no gift tax.

The IRS examined the gift tax returns and issued a notice of deficiency to each of the surviving spouse and each child determining that (1) the commutation of the marital trust resulted in gifts from the surviving spouse to the children under section 2519 and (2) the agreement resulted in gifts from the children to the surviving spouse of the remainder interests in the marital trust under section 2511.

On cross-motions for summary judgment, the Tax Court held that assuming there was a transfer of property under section 2519 when the marital trust was commuted, the surviving spouse is not liable for gift tax under section 2501 because the surviving spouse made no gratuitous transfers, and the transfer of the marital trust property in exchange for promissory notes also did not result in gifts from the surviving spouse to the children.

However, the agreement to commute the marital trust resulted in gifts to the surviving spouse by the children under section 2511.

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