

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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2519.00-00

CASE-MIS No.: TAM-110690-05/CC:PSI:B4

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year(s) Involved:
Date of Conference:

LEGEND:

Decedent =
Spouse =
Executor =
Spouse's Trust =
Decedent's Trust =
Child 1 =
Child 2 =
Child 3 =
Child 4 =
Probate Court =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
Date 12	=
Date 13	=
Date 14	=
Account W	=
Account X	=
Account Z	=
Company K	=
Promissory Note	=
\$a	=
\$b	=
\$c	=
\$d	=
\$e	=
\$f	=
\$g	=
\$h	=
\$i	=

ISSUE 1: Is the value of Promissory Note and assets held in Account Z, that were attributable to assets withdrawn by the Decedent from qualified terminable interest property (QTIP) trusts established for the benefit of Decedent, includible in Decedent's gross estate under section 2044 of the Internal Revenue Code, or did the Decedent, prior to his death, dispose of his income interest in the trusts such that the Decedent made a transfer subject to gift tax under section 2519?

ISSUE 2: Are the assets held in Account Z on the Decedent's death that are attributable to the Decedent's individually owned property includible in the gross estate under section 2033?

CONCLUSIONS:

ISSUE 1: The value of Promissory Note and assets held in Account Z, that were attributable to assets withdrawn by the Decedent from qualified terminable interest property (QTIP) trusts established for the benefit of Decedent, are includible in Decedent's gross estate under section 2044.

ISSUE 2: The assets held in Account Z on the Decedent's death that are attributable to the Decedent's individually owned property are includible in the gross estate under section 2033.

FACTS:

Decedent and his wife, Spouse, were residents of Virginia. On Date 1, Spouse, as grantor, established a revocable inter vivos trust that was subsequently amended and restated on Date 2 as Spouse's Trust. Decedent was designated as Trustee of the trust. Spouse died on Date 3 survived by Decedent.

Under Article V of the trust agreement, upon Spouse's death, if Spouse predeceases Decedent, the Trustee is to divide Spouse's Trust, together with any additions passing to the trust by reason of Spouse's death, into two shares, the Marital Trust and the Residual Trust. The Marital Trust is to be funded with that fractional share of the Spouse's Trust which would, upon Spouse's executor making the election under section 2056(b)(7), provide the maximum marital deduction for federal estate tax purposes to Spouse's estate. The balance of the trust estate is to pass to the Residual Trust.

Under Article VI, the Trustee is to pay the net income of the Marital Trust in installments at least as often as quarterly to Decedent, during his lifetime. Further, in the event that Decedent is in need of funds in excess of the net income from the trust "in order to provide for his care and support in the style and manner of living to which he has been accustomed, or for his medical or other emergency needs", the Trustee is authorized to invade the principal of the trust "for such purposes and in such amounts and at such times as shall be deemed advisable, taking into consideration other resources owned by or available to him." In addition, the Trustee is authorized during Decedent's lifetime to pay to him so much of the principal of Spouse's Trust up to but not in excess of amounts equal to gifts which he may have made to Spouse's issue within the annual gift tax exclusions then allowed for federal gift tax purposes. Upon the death of Decedent, any remaining principal of Spouse's Trust is to become part of the Residual Trust to be administered and distributed after Decedent's death pursuant to the provisions of Article VII.

Under Article VII, during the Decedent's lifetime, the net income of the Residuary Trust is to be paid to the Decedent at least quarterly. In addition, the Trustee may pay to or for the benefit of the Decedent so much of the principal as may be deemed advisable for decedent's "medical, dental, hospital and nursing expenses and for his support in his accustomed manner of living" after taking into consideration other

resources available to the Decedent. However, the Trustee is directed to first use the principal of the Marital Trust before making any discretionary encroachments from the Residuary Trust principal.

Article VII further provides that after Decedent's death, the Residual Trust (including the corpus of the Marital Trust) is to be divided into four equal shares, one share for the benefit of each of Spouse's and Decedent's four children, Child 1, Child 2, Child 3, and Child 4. The shares established for Child 1 and Child 2 are to be distributed outright to those children. Regarding the shares established for Child 3 and Child 4, a portion of each share is to be distributed outright to the child, and the balance is to be held in trust for the benefit of the respective child and that child's children.

Article VII further provides that the principal and the income of the Residual Trust shall, to the extent permitted by law, not be subject to the beneficiaries' liabilities or to alienation by the beneficiaries and the beneficiaries shall have no power to sell, assign, transfer, encumber, or in any other manner to anticipate or dispose of their interests in the trust.

Article IX of the trust agreement authorizes the division of the Marital Trust and the Residuary Trust into an "Exempt Share" and a "Non-Exempt Share" in order to facilitate the allocation of Spouse's generation-skipping transfer tax exemption.

Finally, Article X appoints Child 4 as successor trustee. In the event Child 4 refuses to serve, resigns, or becomes incompetent, Executor is appointed as successor trustee.

As noted above, Spouse died on Date 3, survived by Decedent. On the federal estate tax return (Form 706) filed for Spouse's estate, the executor elected to treat the property passing to the Marital Trust as qualified terminable interest property (QTIP) under section 2056(b)(7), and an estate tax marital deduction was claimed for the date of death value of Marital Trust.

On Date 4, in accordance with Article IX of Spouse's Trust, the Marital Trust was divided into two separate trusts, the Marital Trust-Exempt Share and the Marital Trust Non-Exempt Share. The liquid assets comprising the Marital Trust-Exempt Share were held in Account W with Company K. The liquid assets comprising the Marital Trust-Non-Exempt Share were held in Account X with Company K.

Subsequently, the following sequence of events occurred. On Date 5, Decedent, as Trustee of both Marital Trust-Exempt Share and Marital Trust-Nonexempt Share, signed two letters authorizing the transfer of all assets held in Account W and Account X, respectively, to Account Z, an account also held with Company K, in the name of Decedent individually. On the same date, Decedent wrote a check drawn on Account W in the amount of \$h and a check drawn on Account X in the amount of \$i, and deposited the funds, totaling \$b in Account Z. On Date 6, three days after Date 5,

Decedent issued 2 personal notes payable to the Marital Trust-Exempt Share, and 2 personal notes payable to the Marital Trust-Nonexempt Share. Each note has been marked "Cancelled [Date 7]". Date 7 is two days after Date 6. Also on Date 6, Promissory Note, issued by Child 3 and her husband with a principal amount of \$d, that was apparently an asset of the Marital Trust, was endorsed to Decedent individually.

The assets continued to be held in Account Z until Decedent's death on Date 8, approximately eight months after Date 5. A letter from Decedent's physician contained in the administrative file states that based on an examination of Decedent's medical records, as of Date 5, Decedent had a progressive and "eventually terminal" medical illness, such that there was at least a 50% probability that Decedent would not survive one year.

In accordance with Decedent's will, Executor was appointed as personal representative of the estate. Decedent's will provided that the estate residue was to be distributed to Decedent's Trust, a revocable trust established by Decedent prior to his death. Under the terms of Decedent's Trust, the trust residue is to be distributed to 6 non-family members, one of which was Executor, who receives approximately 75 percent of the total.

On Date 9, two days after the Decedent's death, the estate's counsel met with Child 1, Child 2, Child 3, and Child 4. Each child indicated that he or she had a copy of the Spouse's Trust instrument and he or she was aware that Decedent had withdrawn the funds from the Marital Trusts. No child committed to any relinquishment of his or her rights in the Spouse's Trust arising on Decedent's death. Subsequently, the Debts and Demands procedure under Va. Code Ann. § 64.1-179 was commenced, requiring, "creditors and all other persons interested in the estate of the decedent to show cause on some day to be named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees." Under § 64.1-179, the personal representative who has in good faith complied with the provision is fully protected against the demands of creditors and all other persons.

At the Debts and Demands hearing, no one appeared in opposition to the Executor's plan of distribution. Probate Court issued an order dated Date 10 authorizing distribution of the estate to Decedent's Trust, to be distributed in accordance with the terms of that trust. Executor took the position that the court order applied to all assets in his possession including the assets Decedent withdrew from the Marital Trusts. Accordingly, on Date 12 and Date 13, Executor distributed the assets (other than cemetery lots bequeathed to Decedent's children), including the assets withdrawn from the Marital Trusts, to Decedent's Trust. Subsequently, these assets were distributed to the beneficiaries designated in the trust, noted above.

Decedent's Form 706 was filed on Date 11 (prior to Dates 12 and 13). Schedule F of the return (Other Miscellaneous Property Not Reportable Under Any Other Schedule), reported, as Item 8, a total of \$a as "Section 2044 Property includible by

reason of [Spouse's Trust]". This \$a amount consisted of a portion of Account Z in the amount of \$b, as well as a discounted value of Promissory Note in the amount of \$c. The remaining portion of Account Z in the amount of \$g was reported on Schedule C (Mortgages, Notes, and Cash).

Upon audit of Decedent's estate tax return, the total value of Account Z included in the gross estate was increased to \$e (adjusted in part on Schedule C and in part on Schedule F) and the value of Promissory Note included in the gross estate was increased to \$f.

Subsequently, on Date 14, Decedent's estate filed a Form 843, Claim for Refund and Request for Abatement. The estate argues that the property held in Marital Trust Exempt Share and Marital Trust Non-Exempt Share that was withdrawn by Decedent and deposited in Decedent's Account Z, and Promissory Note that was endorsed to Decedent in his individual capacity, are not includible in the gross estate under section 2044, or any other Code section. The estate contends that Decedent is properly treated as having disposed of his qualifying income interest for life in the property on Date 5, or sometime thereafter, when Decedent withdrew the assets from Account W and Account Y and transferred them to his personal investment account (Account Z), and endorsed Promissory Note to himself. The estate argues that, because Decedent's withdrawal of funds was not authorized under the trust instrument, it constituted a breach of Decedent's fiduciary duty. Therefore, the estate argues that a constructive trust was imposed on the assets. Further, under constructive trust principles, because Decedent commingled his assets with the assets of the Marital Trusts, at some point in time it became impossible to determine which assets were attributable to the Marital Trust and which were attributable to Decedent, and as a result, it is argued, Decedent's interest in the assets of the Marital Trusts terminated and a disposition under section 2519 occurred. Therefore, the portion of Account Z attributable to the property previously held in the Marital Trusts, as well as Promissory Note, are not includible in the gross estate for estate tax purposes. Rather, the Decedent made an inter vivos gift subject to gift tax, that the estate proposes to pay as an offset to the estate tax refund.

In addition, the estate also argues that because Decedent commingled the Marital Trusts assets with his own assets held in Account Z, Decedent's interest in his own assets held in Account Z (\$g reported on Schedule C of Form 706) also terminated in accordance with constructive trust principles. Accordingly, the \$g amount is also not includible in the gross estate.

Issues 1 and 2

Federal Law

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 includes in the gross estate the value of all property to the extent of the interest therein of the decedent at the time of his death. Under sections 2044(a) and (b), the gross estate includes the value of any property for which a deduction was allowed under section 2056(b)(7) with respect to the transfer of the property to the decedent, and in which the decedent had a qualifying income interest for life, and with respect to which section 2519 did not apply with respect to a disposition by the decedent of part or all of the property.

Section 2056(a) of the Internal Revenue Code provides that for purposes of the tax imposed by section 2001, the value of the taxable estate, except as limited by section 2056(b), is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the decedent's surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Under section 2056(b)(1) where, upon the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction is allowed with respect to the interest: (A) if an interest in property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than the surviving spouse (or the estate of the spouse); and (B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse.

Section 2056(b)(7) provides an exception to the "terminable interest" rule in section 2056(b)(1). Generally, under section 2056(b)(7), qualified terminable interest property (QTIP) is treated as passing to the surviving spouse, and no part of the property is treated as passing to any person other than the surviving spouse. Under section 2056(b)(7)(B)(i), "qualified terminable interest property" is defined as property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election applies.

Under section 2056(b)(7)(B)(ii), the surviving spouse has a qualifying income interest for life if the surviving spouse is entitled for life to all the income from the property, payable annually or at more frequent intervals, and no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2044(a) provides that the value of the gross estate shall include the value of any property to which the section applies in which the decedent had a qualifying income interest for life. Section 2044(b) provides that section 2044 applies to any property if (1) a deduction was allowed with respect to the transfer of such property to the decedent (A) under section 2056 by reason of subsection (b)(7) thereof, or (B) under section 2523 by reason of subsection 2523(f) thereof, and (2) section 2519

(relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2519(a) provides that for purposes of the gift tax and the estate tax, any disposition of all part of a qualifying income interest for life in any property to which the section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest. Section 2519(b) provides that section 2519 applies to any property if a deduction was allowed with respect to the transfer of such property to the donor under section 2056(b)(7) or under section 2523(f).

The term "disposition," as used in § 2519, applies broadly to circumstances in which the surviving spouse's right to receive the income is relinquished or otherwise terminated, by whatever means. See H. Rep. No. 201, 97th Cong., 1st Sess. 161 (1981) that states:

The bill provides that property subject to a [QTIP election] will be subject to transfer taxes at the earlier of (1) the date on which the spouse disposes (either by gift, sale, or otherwise) of all or part of the qualifying income interest, or (2) upon the spouse's death.

Section 25.2519-1(f) provides that the conversion of qualified terminable interest property into other property in which the donee spouse has a qualifying income interest for life is not treated as a disposition of the qualifying income interest. Thus, the sale and reinvestment of assets of a trust holding qualified terminable interest property is not a disposition of the qualifying income interest, provided that the donee spouse continues to have a qualifying income interest for life in the trust after the sale and reinvestment. Similarly, the sale of real property in which the spouse possesses a legal life estate and thus meets the requirements of qualified terminable interest property, followed by the transfer of the proceeds into a trust which also meets the requirements of qualified terminable interest property, or by the reinvestment of the proceeds in income producing property in which the donee spouse has a qualifying income interest for life, is not considered a disposition of the qualifying income interest. On the other hand, the sale of qualified terminable interest property, followed by the payment to the donee spouse of a portion of the proceeds equal to the value of the donee spouse's interest, is considered a disposition of the qualifying income interest. See also, Rev. Rul. 98-8, 1998-1 C.B. 541 (concluding that the purchase by the surviving spouse of the remainder interest in the QTIP trust for an amount equal to the actuarial value of the remainder interest constitutes, in substance, a disposition of spouse's income interest subject to section 2519, and alternatively, a gift under section 2511.)

State Law – Constructive Trusts

The Tax Court has described the constructive trust doctrine, as follows:

A constructive trust is one raised by operation of law and imposed by a court of equity where the legal title to money or property is obtained by a person in

violation of some duty owing another who is equitably entitled to the property. . . . A constructive trust will be used to compel a party who unfairly holds a property interest or money to convey that property to the one to whom it justly belongs, . . . to prevent a person from holding for his own benefit an advantage gained by the abuse of a fiduciary relationship, . . . or where the person holding property would be unjustly enriched if he were permitted to retain such property. . . .

Barr v. Commissioner, T.C. Memo 1989-420 (citing Illinois law). See also, V Austin W. Scott and William F. Fratcher, Scott on Trusts (4TH ed. 1989) § 462.1 (“A constructive trust, . . . is imposed in order to prevent unjust enrichment. This unjust enrichment may arise out of the wrongful acquisition of the title to property. This is the case where title is acquired through fraud, duress or undue influence, by the wrongful disposition of another’s property, or by a person in a fiduciary relationship . . . in violation of his duty as a fiduciary.”) The Virginia Supreme Court has applied the doctrine in appropriate circumstances. Cooper v. Cooper, 249 Va. 511, 457 S.E. 2nd 88(Sup. Ct. Va. 1995); Leonard v. Counts, 221 Va. 582, 589, 272 S.E. 2d 190, 195 (Sup Ct. Va. 1980); Sweeny v. Patton, 134 Va. 117, 113 S.E. 715,716 (Sup. Ct. Va. 1922).

Application of the doctrine requires that the aggrieved party seek relief in a court of equity in order to reach the property at issue. Estate of Clopton v. Commissioner, 93 T.C. 275 (1989). In Estate of Clopton, a case involving Virginia law, the decedent created an inter vivos charitable remainder trust pursuant to which she retained an interest for life, such that the trust was includible in her gross estate. On her death, the corpus was to be distributed equally to three charities, one of which was VEF. Shortly before decedent’s death, VEF’s tax exempt status was revoked. However, the trustee, was misled by VEF regarding its tax exempt status, and distributed one-third of the corpus to VEF. The IRS disallowed the estate tax charitable deduction for the distribution to VEF. In challenging the disallowance, the estate argued that the funds distributed to VEF were held by VEF in a constructive trust for the qualifying charitable organizations that were remainder beneficiaries of the trust or received bequests under the decedent’s will. However, the court rejected the petitioner’s argument that under Virginia law, a constructive trust was imposed on the property held by VEF, in part on the basis that there was no evidence that any potential plaintiff had invoked the powers of a court of equity and “[t]he [constructive trust] doctrine requires that a plaintiff seek relief in a court of equity to reach the converted property or funds.” Estate of Clopton v. Commissioner, 93 T.C. at 283 (citing Sweeny v. Patton, supra, and V A. Scott on Trusts (3rd ed. 1967) § 462).

Generally, a constructive trust is imposed to prevent unjust enrichment. By enforcing a constructive trust, the court of equity restores the status quo “and puts the parties in the same position in which they were before the [aggrieved action] was committed.” Scott and Fratcher, supra at § 462.2. However, to the extent a person commingles his own funds and trust funds, that person has the burden of establishing how much of the commingled funds the person owns personally. Tauber v.

Commonwealth, 263 Va. 520, 541, 562 S.E. 2nd 118, 129 (Sup Ct. Va. 2002) (citing Scott and Fratcher, supra at § 515). Further, “[i]f it does not appear to what extent the property acquired by the wrongdoer was the product of the claimant’s property and to what extent it was the product of the wrongdoer’s property, it is impossible to show what the shares in the property should be. But if the wrongdoer is himself to blame for the claimant’s inability to prove what his share should be, there is authority to the effect that he is entitled to the whole of the property.” Scott and Fratcher, supra at § 516.

Analysis

As noted above, the estate generally contends that, applying constructive trust principles, neither Promissory Note, nor the value of Account Z, whether attributable to assets withdrawn from the Marital Trusts or Decedent’s individual property, are includible in the gross estate.

We disagree with the estate’s analysis. Regarding inclusion of Promissory Note and the assets withdrawn from the Marital Trusts, the estate asserts that the transaction constituted a disposition under section 2519. As discussed in Rev. Rul. 98-8, the estate tax marital deduction provisions generally provide for a deferral of transfer tax where property includible in the decedent’s gross estate passes to or for the benefit of the surviving spouse. A deduction is allowed with respect to the property in the estate of the predeceased spouse, on the basis that the property will be subject to transfer tax when the surviving spouse either dies or makes a lifetime disposition of the property. Under either circumstance, the property is subject to transfer tax. Estate of Clayton v. Commissioner, 976 F.2d 1486, 1491 (5th Cir. 1992); Estate of Letts v. Commissioner, 109 T.C. 290, (1997) (“It is a basic policy of the marital deduction that property that passes untaxed from a predeceasing spouse to a surviving spouse is included in the estate of the surviving spouse.”) The statutory scheme of the QTIP provisions is consistent with this policy. A marital deduction is allowed under § 2056(b)(7) for property passing from a decedent to a QTIP trust in which the surviving spouse possesses a lifetime income interest. Under either §§ 2519 or 2044 the property for which a deduction was allowed will be subject to either a gift tax (if the spouse disposes of the income interest) or an estate tax if the spouse retains the income interest until her death.

In the instant case, after the withdrawals, the Decedent was in possession of, and retained an income interest in, the entire property that would otherwise be the subject matter of the section 2519 gift. Therefore, we believe the situation presented is analogous to those situations described in §25.2519-1(f). For example, under the regulation, the sale of real property in which the spouse possesses a legal life estate (that constitutes a qualifying income interest for life) followed by the reinvestment of the proceeds in income producing property in which the donee spouse has a qualifying income interest for life, is not considered a disposition under §2519. Similarly, the transfer of the sales proceeds to a trust which meets the requirements of QTIP, is not a disposition under §2519. In both cases, although the property or proceeds is held in a

different form, the spouse still possesses the qualifying income interest for life in the property, or its proceeds, that was initially subject to the QTIP election. In this case, the decedent continued to possess, at a minimum, the right to receive the income from the assets withdrawn from the Marital Trusts. Thus, the transaction did not constitute a disposition, under the facts presented, that would trigger a gift under section 2519. Therefore, the property at issue is includible in decedent's gross estate under section 2044.

Regarding the estate's constructive trust argument, we note that, as was the case in Estate of Clopton v. Commissioner, the parties who have been adversely impacted by Decedent's actions with respect to the Marital Trusts, Child 1, 2, 3, and 4 as the remainder beneficiaries of the Marital Trusts, have not sought any relief in a court of equity in order to claim their interests under the terms of the trusts, and no court has ordered that any constructive trust be imposed on the property. Because no party has sought relief in a court of equity to impose a constructive trust as a result of Decedent's actions, we do not believe that any constructive trust was imposed with respect to the property. Estate of Clopton v. Commissioner, 93 T.C. at 284. Indeed, the Executor concluded that the property passed under the terms of Decedent's Trust, and maintains that the Probate Court order authorized distribution of the property to Decedent's Trust. In addition, Executor has distributed the property to the designated beneficiaries of Decedent's Trust, rather than to Decedent's children, the designated beneficiaries of the Marital Trusts. This all supports the conclusion that no such constructive trust was ever imposed for the benefit of the Decedent's children.

Further, assuming the property at issue could properly be characterized as held in a constructive trust, we do not believe that the Decedent's qualifying income interest in the property thereby terminated or was forfeited. As discussed above, a constructive trust, if enforced by a court of equity, would generally be enforced in a manner that places the parties in the same position they would have been in prior to the action at issue. However, the estate argues that the Decedent commingled his individual assets with those of the Marital Trusts such that it became, at some point in the 8 month period prior to Decedent's death, impossible to establish what portion of Account Z was attributable to the Marital Trusts' assets or to Decedent's income interest in those assets. The estate appears to contend therefore, that at some point, Decedent's interest in the entire commingled fund, including Decedent's income interest and Decedent's individual assets, terminated.

The Form 706 filed by the Executor, however, reported the value of the assets of the Marital Trusts subject to inclusion under section 2044 on Schedule F, and also separately reported other assets held in Account Z on Schedule C. The amount reported on Schedule F, Item 8, included the value of Promissory Note. Further, there is no indication that Promissory Note was not readily identifiable. It appears, therefore, that the Executor was able, at that time, to determine what assets and earnings thereon were properly attributable to Marital Trusts. Thus, at most, the imposition of a constructive trust would result in the transfer of the assets from a QTIP trust, to another

trust in which decedent had a qualifying income interest for life. Such a transaction would not constitute a disposition for purposes of section 2519. See § 25.2519-1(f). Accordingly, we do not believe that, assuming a constructive trust was imposed under Virginia law, the Decedent's qualifying income interest in the Marital Trusts terminated, or was otherwise disposed of under section 2519.

For similar reasons, we believe the \$g portion of Account Z attributable to Decedent's individual assets, is includible in the gross estate. Decedent owned these assets at the time of his death. No person sought to impose, nor did any court impose, any constructive trust on these assets. Rather, in accordance with the Probate Court order, these assets were distributed to Decedent's Trust in accordance with the terms of Decedent's will. Even if a constructive trust were to be imposed, there is no indication that the assets weren't readily determinable as reported on Schedule C of Form 706. Thus, these assets are properly included in the gross estate under section 2033. Estate of Clopton v. Commissioner, cited above.

Finally, we note that we are not addressing the gift tax consequences with respect to Child 1, Child 2, Child 3 and Child 4 regarding the relinquishment of their respective interests in the Marital Trusts.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.