Internal Revenue Service

Number: **200534014**
Release Date: 8/26/2005
Index Number: 2511.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-157830-04
Date: APRIL 29, 2005

In Re:

LEGEND:

Father	=
Son	=
Company	=
State	=
Partnership	=
LLC	=
Year 1	=
Cite 1	=
Cite 2	=

Dear :

This is in response to your October 22, 2004 letter and other correspondence requesting a ruling concerning the gift tax consequences of the transaction described below.

The facts submitted are as follows: Company, a State corporation, was organized in Year 1. Son was the "driving force" behind Company. Son provided Father with the funds for the initial purchase of shares in Company. Father agreed to take title to shares in Company for the benefit of, and on behalf of Son. The stock was issued in Father's name so that Company could benefit from Father's creditworthiness. Father was willing to execute personal guarantees to enable Company to obtain financing. At the time of Company's organization, Son was experiencing credit difficulties. Father, while the majority shareholder of Company, was not involved in the business.

In addition to the ownership of Company shares, Father, as a shareholder, received an interest in Partnership, a State limited partnership formed by Company's shareholders. The shareholders received pro rata interests in both Partnership and

LLC, a State limited liability company created to be the general partner. Company loaned the funds to the shareholders for this investment. The shareholders contributed the loaned amounts to Partnership.

Father's credit rating is no longer needed by Company. Father would like to transfer the shares in Company to Son. Father proposes to cause the stock register of Company, together with the ownership registries of Partnership and LLC to be changed to reflect that the beneficial ownership of all interests is in Son, rather than in Father.

Father represents that he never held any beneficial ownership of the shares issued in his name. All of the founding shareholders were aware that Father was holding shares in trust for Son.

You have requested a ruling that the transfer of stock in Company to Son, effected by changing Father's name to Son's name on the stock register of Company and the ownership registries of Partnership and LLC, will not be a taxable gift under section 2511 of the Internal Revenue Code.

LAW AND ANALYSIS

Section 2501(a)(1) provides for the imposition of a gift tax for each calendar year on the transfer of property by gift by an individual. Section 2511(a) provides that the gift tax applies to a transfer by way of gift whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-2(b) of the Gift Tax Regulations provides that a gift of property is complete to the extent the donor has so parted with dominion and control as to leave him no power to change its disposition, whether for his own benefit or for the benefit of another.

Section 25.2511-2(c) provides in part, that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title to the property in himself. Similarly, in Burnet v. Guggenheim, 288 U.S. 280 (1933), the United States Supreme Court held that the Federal gift tax "is not aimed at every transfer of the legal title without consideration. Such a transfer there would be if the trustees were to hold for the use of the grantor. It is aimed at transfers of the title that have the quality of a gift, and a gift is not consummate until put beyond recall." See also Rev. Rul. 54-537, 1954-2 C.B. 316, where the right to revest the beneficial title to property transferred in trust by the donor is an incomplete gift, and Rev. Rul. 74-365, 1974-2 C.B. 324, where the Service held a gift causa mortis was not a completed gift because the gift was revocable and the subsequent return of the property did not result in a gift.

In Cite 1, Father deeded land to Son-in-law and Daughter, so that Son-in-law could mortgage the land to pay for a business purchase. Son-in-law agreed to

reconvey the land to Father after the loan was repaid. In connection with the purchase of the business, Son-in-law signed notes with Seller for the balance of the purchase price. The business did not prosper and Son-in-law was unable to repay the notes. A judgment was entered against Son-in-law. Son-in-law conveyed the land to Daughter, as part of a community property settlement, in relation to their divorce. A writ of execution was issued and levied by the county sheriff on any rights that Son-in-law had to the land. Prior to the scheduled sale of the land, Daughter reconveyed the land to Father. The sheriff sold the land, by virtue of the writ of execution to Seller. Seller sued Father for the land, claiming that the deeds from Son-in-law to Daughter and from Daughter to Father were void because Seller was a prior creditor of Son-in-law. The court cited Cite 2 and stated that it has long been the established rule of equity that where a grantor, without consideration, conveys property to a grantee, under circumstances that do not constitute a gift, a resulting trust arises. Under such circumstances equity presumes an intention of the parties that the beneficial title is to remain in the grantor and the grantee holds title for grantor's benefit. The court held for Father and held that the initial conveyance from Father to Son-in-law and Daughter was not a gift. Son-in-law held the land for Father in a resulting trust and Father maintained beneficial ownership of the land.

In this case, Son provided the funds to purchase of shares in Company which were conveyed to Father. Father never acquired a beneficial interest in the shares or the interests in Partnership and LLC. Instead, Father held the shares of Company in a resulting trust for the benefit of Son. Accordingly, this conveyance of stock in Company did not constitute a gift. Therefore, based on the facts presented and the representations made, we conclude that the transfer of stock in Company to Son, effected by changing Father's name to Son's name on the stock register of Company and the ownership registries of Partnership and LLC, will not be a gift under section 2511.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

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.
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.

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

Sincerely,

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Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy of letter for section 6110 purposes