QPRTS

Recent IRS Ruling Adds a New Dimension to QPRT Planning

The IRS recently ruled that a qualified personal residence trust coupled with a sale of a remainder interest would not give rise to any gift tax. The authors compare this new technique with a traditional QPRT.

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Recently, the IRS released Ltr. Rul. 200919002 (the “Ruling”), regarding a technique involving a lifetime qualified personal residence trust (“QPRT”) and a sale of the remainder interest in the QPRT (the “Remainder Sale Technique”). Under the Remainder Sale Technique, it may be possible for a taxpayer to transfer a residence to a QPRT that permits the taxpayer the continued use of the residence for life without the transferred property being included in the taxpayer's estate at death under Section 2036. While the benefits of using the Remainder Sale Technique may at first appear to be considerable, planners must question whether this technique generates a better outcome than a traditional QPRT. The decision of whether to use the Remainder Sale Technique or a traditional QPRT is likely to vary from case to case.

In this Ruling, a husband and wife (sometimes referred to as the “taxpayers”) had previously formed and funded an irrevocable dynasty trust for the benefit of their issue (the “Purchasing Trust”). The taxpayers now planned to form a QPRT and fund the QPRT with their personal residence. The QPRT was to be held for the benefit of the taxpayers for the rest of their joint lives, allowing them the rent-free continued use of the transferred residence. Upon the death of the survivor of the taxpayers, the residence was to be distributed to the “Purchasing Trust.” In exchange for the taxpayers transferring their residence to the QPRT, the Purchasing Trust was to transfer to the taxpayers cash and marketable securities having an aggregate fair market value equal to the present value of the remainder interest in the residence based on an independent appraisal and IRS valuation tables. [1]

The taxpayers requested a ruling from the IRS as to whether the transfer of their residence to the QPRT was exempt from any gift taxes under Sections 2702 and 2512 because the value of their retained interest plus the consideration they received from the remainder beneficiary (Purchasing Trust) at the time of their funding of the QPRT, which was equal to the actuarial value of the remainder interest, equaled 100% of the property's value. The IRS ruled that the transfer to the QPRT would not give rise to any gift tax because the taxpayers received adequate consideration.

One of the keys to the success of the Remainder Sale Technique was the fact that the taxpayers' retained right to use the property for the rest of their joint lives under the terms of the QPRT was a “qualified interest” under Section 2702. Section 2702 provides that solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust that is not a qualified interest and that is retained by the transferor or any applicable family member is disregarded. As a result, if the taxpayers' interest was not a qualified interest under Section 2702, there would be a gift equal to the total value of the property minus the consideration paid for the remainder. However, the value of any "qualified interest" should be taken into account and determined under Section 7520. Therefore, for the Remainder Sale Technique to work for gift tax purposes, it had to include not only full consideration being paid for the remainder interest, but also the retained interest had to be a qualified interest under Section 2702. [2]

Some have called Ltr. Rul. 200919002 a change in position by the IRS, but arguably, the Ruling is only a codification of the IRS's position. [3]

Estate tax inclusion

One unanswered question remaining after the Ruling is whether the IRS will seek estate tax inclusion under Section 2036. Unfortunately, the IRS explicitly declined to rule on this issue, and has in fact challenged similar transactions in the past with mixed results.

Section 2036(a) provides in relevant part that a person's gross estate includes "the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer *(except in case of a bona fide sale for an adequate and full consideration in money or money's worth)*, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death the possession or enjoyment of, or the right to the income from, the property" (emphasis added).

Ordinarily, if a taxpayer creates a QPRT for a term of years and dies during the QPRT term, the entire value of the assets held in the trust will be included in the taxpayer's estate under Section 2036. The question becomes whether the payment by the Purchasing Trust of cash and other assets equal to the actuarial value of the remainder interest of the assets held in the QPRT satisfies the "adequate and full consideration" exception of Section 2036, thereby removing the residence inside the QPRT from the taxpayer's estate.

Whether the transferred residence is included in the grantor's estate at death is important not just for estate tax purposes but also, possibly, for generation-skipping transfer ("GST") tax purposes. Typically, when a grantor establishes a QPRT, the grantor is unable to effectively leverage his or her GST tax exemption under the estate tax inclusion period ("ETIP") rules, which basically say that because the residence may be included in the grantor's estate if the grantor fails to survive the term of the QPRT, the allocation of GST exemption is not effective until the end of the QPRT term. [4] If, instead, a grantor used this Remainder Sale Technique with a trust with an inclusion ration of zero for GST tax purposes, and assuming the technique avoids estate tax inclusion at the grantor's death, the residence would thereby be exempted from any future GST tax.

This Remainder Sale Technique also provides another key benefit for some clients, namely that the grantor will never have to be a tenant in the grantor's own home. Because the grantor retains a lifetime interest in the transferred residence (or in this case married grantors retained a joint and survivor lifetime interest), the grantor never has to be concerned that he or she will survive the QPRT term and then have to rent the property from the remainder beneficiaries of the QPRT. [5]

Case law

However, uncertainty over estate tax inclusion exists because the IRS has previously challenged the notion that taxpayers can remove the entire value of assets from their estates by having the remainder beneficiaries pay the actuarial cost for only the remainder interest in the property. [6]

Gradow. The leading court decision with a favorable outcome for the IRS on this issue is *Gradow.* [7] There, a deceased husband's will provided his surviving widow with the option of either (1) rejecting the husband's will and, as a consequence, maintaining only her share of the community property or (2) accepting the will, allowing all of the deceased's husband's assets to pass to a trust for the widow's benefit and transferring all of her interests in the same property to the trust as well. The widow opted for the latter option and later died.

The executor of the widow's estate filed an estate tax return referencing the trust but not including any of the trust's assets in the estate, asserting that the life estate interest that the widow retained was full and adequate consideration for the remainder interest in the property transferred. The IRS issued a notice of deficiency and contended that the value of the community property interest that the wife forfeited and transferred to the trust should be included in her estate under Section 2036, but that it should be reduced by the IRS-determined value of the consideration (the life estate) she received.

The IRS reasoned that because the value of the life estate the widow received was smaller than the full fee simple value of the property transferred, it was includable in her estate at death. In other words, even if the widow received consideration having a value equal to the remainder interest in the transferred property, Section 2036 would still function to pull the transferred property back into the widow's estate at her death. The executor of the estate argued that the income interest she received in the trust as a result of her forfeiting her community property rights was equivalent to the value of the remainder interest in the property she forfeited and, therefore, the property should be excluded from the estate. The court ruled in favor of the IRS and agreed with its reasoning.

The court's main rationale for its opinion involved a parsing of Section 2036. The court reasoned that "the most natural reading of Section 2036(a) ... [indicated that] 'property' in the phrase 'The gross estate shall include ... all property ... of which decedent has at any time made a transfer' means that part of the trust corpus attributable to [the taxpayer].... Fundamental principles of grammar dictate that the parenthetical exception which then follows—'(except in case of a bona fide sale ...)'—refers to a transfer of that same property...." [8] Based on this reading of the Code, the court reasoned that the term "property" in Section 2036(a) meant the whole property—not just the remainder interest transferred. Therefore, the consideration that the surviving spouse had to receive for her remainder interest had to be equal to the value of the full fee simple interest she had in the property. The parties to the proceeding had already stipulated that the value of the lifetime interest that the surviving spouse received in exchange for her transfer was less than the value of her full fee simple interest in the property. Hence, the full value of the property was included in her estate.

D'Ambrosio. The next leading case on this issue was *Estate of D'Ambrosio.* [9] In *D'Ambrosio*, the decedent made an inter vivos transfer of her remainder interest in certain preferred stock back to the closely held issuing corporation in return for an annuity. It was stipulated that the annuity's actuarial value was equal to the remainder interest in the property. The executor filed an estate tax return and did not include the stock as an asset of the estate. The IRS issued a notice of deficiency and argued that the full value of the stock should be included in the decedent's estate under Section 2036, less the value of the annuity payments the decedent received prior to her death. The court agreed with the taxpayer. In reaching its conclusion, the court discussed *Gradow* and particularly its analysis of Section 2036, stating:

> ...although the *Gradow* court's rationale appears plausible, we note that the court, in quoting the statute, left out significant portions of its language. Below is the text of section 2036, with the omitted words emphasized:
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> "The *value of the* gross estate shall include *the value of* all property *to the extent of any interest therein* of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life ... (1) the possession or enjoyment of, or the right to the income from, the property ..." [10]

The *D'Ambrosio* court relied heavily on the phrase “to the extent of any interest therein” in holding that the gross estate was to include the value of the remainder interest transferred, unless it was sold for adequate and full consideration. Under this analysis, the taxpayer need only receive consideration having a value equal to the remainder interest transferred for it to be excluded from the estate at death under Section 2036. The court noted that to require otherwise would be against public policy as it could impose double taxation. “[I]f the full, fee simple value of the property at the time of death is pulled back into the gross estate under section 2036(a), subject only to an offset for the consideration received, then the post-sale appreciation of the transferred asset will be taxed at death. Indeed, it will be double-taxed, because, all things being equal, the consideration she received will also have appreciated and will be subject to tax on its increased value.” [11]

The *Gradow* court stated that the transferor had to receive consideration equal to the fee value of the property at the time of the transfer, specifically noting that it did not feel it would be correct for a younger taxpayer to be able to transfer his or her remainder interest in a piece of property that was substantially discounted based on actuarial tables, in return for consideration equal only to the remainder interest and not have the transferred property included in the taxpayer's estate at death under Section 2036. The court illustrated its point with an example of a taxpayer selling a piece of real property (Blackacre) for less than its full fee value.

The *D'Ambrosio* court discussed this argument and reasoned that if a person sold a remainder interest in a piece of real property (Blackacre), with a fee value of $1 million, for its actuarial value of $100,000 and invested that money, by the time the transferor died (assuming actuarial tables are correct) the $100,000 would be equal to what Blackacre would have been worth, with appreciation, if it had been retained by transferor. Therefore, the transfer does not actually deprive the government of its opportunity to tax property having an equivalent value of the asset. This argument, of course, assumes that the transferor does not spend any of the money received and that he or she experiences the actuarial estimated rate of returns.

The holding in *D'Ambrosio* is favorable, as a person is allowed to transfer a remainder interest in a piece of property for consideration equal in value to the remainder interest transferred, retain a life estate in the property, and the entire property would be excluded from the taxpayer's estate at death. “[W]e believe that the clear import of the phrase 'to the extent of any interest therein' is that the gross estate shall include the value of the remainder *interest*, unless it was sold for adequate and fair consideration.” [12]

Wheeler. Another case that dealt with this issue was *Wheeler.* [13] There, a father transferred a remainder interest in his ranch (which was also his personal residence) to his two adopted sons in return for consideration (a secured promissory note) having a value equal to the actuarial value of the remainder interest. The note was repaid in full three years later and the father died six years after the transfer. The decedent's estate tax return did not include the ranch, and the IRS issued a notice of deficiency, arguing that the full value of the ranch was includable in the estate less the value of the consideration received.

The court in a very well-reasoned opinion, ruled in favor of the taxpayer, distinguishing its set of facts from the facts in *Gradow* because in *Gradow* the widow received only the right to a life estate in her husband's property in return for her property interest. Therefore, the widow effectively transferred property out of her estate in return for property that could not be included in her estate at death, divesting the government of its power to tax property of an equivalent value at death.

The *Wheeler* court discussed the Blackacre example provided in the *Gradow* case and noted that if a taxpayer were to follow the holding in *Gradow* and somehow found a willing purchaser of a remainder interest in Blackacre (having a fair market value of $100,000) for the full fee simple value of the underlying property ($1 million), the purchaser would have paid more than the remainder interest is worth and would have effectively made a gift under Section 2512(b). “The problem with the *Gradow* dicta is that, in its effort to escape the hypothetical posed by the taxpayer, it lost sight of the very principle the court was trying to apply; namely, the notion that adequate and full consideration under the exception to section 2036(a) requires only that the sale not deplete the gross estate." [14] The court also noted that Congress enacted Section 2702 to deal with these types of transactions under the special valuation rules for gift taxes and that the transaction may have been more vulnerable to an assessment for gift tax than for estate tax.

Magnin. The most recent case to confront this issue appears to be *Estate of Magnin.* [15] In *Magnin,* the decedent (Cyril) and his father entered into a contract under which Cyril's father agreed to devise all the stock he owned in two family corporations to Cyril, and Cyril agreed not to transfer any of his stock in the corporations to anyone other than his children. Alternatively, if the corporations were sold to third parties or dissolved, Cyril agreed to hold the proceeds from such disposition in trust, the income of which would be paid to Cyril for life, after which the principal would be distributed to his children. In addition, upon his father's death, Cyril was to receive the voting rights to all his father's stock.

Subsequently, Cyril's father died and some years later, Cyril sold one of the companies. Cyril placed the proceeds from such sale into trusts that provided Cyril with an income interest for life and distributed any balance remaining upon his death, outright to his children. The estate did not include these trusts on Cyril's estate tax return. The question was whether the property the decedent received from his father (the life estate interest in the stock of the corporations and the right to vote that stock) was adequate and full consideration for Cyril's transfer of the proceeds from the sale of the corporation to trusts for his children, for Section 2036 purposes. The court, citing to *D'Ambrosio*, held that the consideration received need only be equal to the value of the remainder interest in the property transferred, not the full fee interest in the property, and found in favor of the taxpayer.

The court in *Magnin* also noted that "'adequate and full consideration' under the corresponding gift tax section, 26 U.S.C. section 2512(b), equals the value of the remainder interest.... We find the interpretation of 'adequate and full consideration' under the gift tax to constitute highly persuasive authority for the Estate's position. The Supreme Court, while interpreting this very phrase, has stated that '[t]he gift tax was supplementary to the estate tax. The two are in pari materia and must be construed together.'" [16]

The *Magnin* court also addressed the Blackacre example from *Gradow* and noted, "If the individual in this Blackacre transaction instead decided to squander the proceeds from the sale of Blackacre's remainder rather than invest them, the situation would be no different than if the person had either sold Blackacre outright or invaded the principal periodically, and squandered that money." [17]

On remand, the Ninth Circuit directed the Tax Court to determine whether the property the decedent received from his father was adequate and full consideration for Section 2036 purposes. [18] In performing this analysis, the Tax Court examined the actuarial valuations submitted by the expert for the IRS and estate's expert, and determined that the calculations of the IRS's expert were more accurate than those of the estate's expert and, therefore, that the value of the life estate the decedent received in the stock was not equal to the value of the remainder interest in the stock he transferred. Accordingly, under Section 2036, all the property the decedent transferred was includable in his estate, and the estate was entitled to only a small offset for the consideration received. The Tax Court appeared to accept the general principle of actuarial valuation of the remainder even though the court believed that the seller had done the math wrong.

Section 2702

All the transactions at issue in the cases discussed above predate Section 2702, which became effective on 10/8/1990. Under Section 2702, all the transfers at issue in the preceding cases would have been subject to a gift tax at the time of the transfer because the value of the retained interest would have been disregarded because none of them were "qualified." Thus, a gift would have occurred to the extent the value of the property transferred (unreduced by the unqualified retained interest) exceeded the value of the consideration received.

Under the logic of the Supreme Court noted above that the gift and estate taxes must be construed together, one would assume that if a taxpayer receives less than full and adequate consideration for gift tax purposes and the gift tax owing is never paid, the transfer would be exposed to inclusion under Section 2036 at death. Accordingly, under Section 2702, unless a qualified interest is involved, it would appear that the logic of *Gradow* would carry the day and that a transferor of a remainder interest must receive consideration equal to the full fee value of the property transferred.

While the *D'Ambrosio* line of cases would seem to argue that the approach adopted under Section 2702 defies economic realities and is possibly against public policy, one assumes that Congress considered these factors when enacting the statute and determined it was a necessary step to take. As such, the only way one is able to achieve the favorable results enjoyed by the taxpayers in *D'Ambrosio* and its progeny is if the taxpayer retains a "qualified" interest under Section 2702, thus allowing the value of the property transferred to be reduced by the retained interest, and receive consideration equal to the remainder interest transferred.

Using the rationale announced in *Magnin*, the fact that the IRS has held in the Ruling that the transferor to the QPRT received full and adequate consideration under Sections 2702 and 2512 so as to avoid any potential gift tax at the time of transfer would seem to imply that the IRS will be unable to argue later that Section 2036 should apply at the transferor's death, as the gift and estate taxes are to be construed together. Nevertheless, based on the arguments the IRS has raised in the above discussed cases, it does not seem out of the realm of possibility that the IRS may try.

Is the Remainder Sale Technique right for clients?

Even if one is able to achieve all the benefits contemplated with the Remainder Sale Technique (a QPRT coupled with a sale of a remainder interest), planners must question whether the Remainder Sale Technique generates a better outcome than a traditional QPRT. The decision of whether to use the Remainder Sale Technique or a traditional QPRT is likely to vary from case to case.

For example, especially in a low interest rate environment like the one we are currently experiencing, the reversionary right in a traditional QPRT will provide a substantial benefit. When using the Remainder Sale Technique, a donor will not retain a reversionary right, as it welcomes all the estate inclusion issues the donor is attempting to avoid with the sale. Therefore, the use of the Remainder Sale Technique, while avoiding gift (and possibly estate) tax consequences, will inflate the value of the remainder interest being sold. This issue is exacerbated in a low interest rate environment.

Additionally, if the property does not appreciate in value at the IRS's assumed rates and/or if the donor outlives the IRS life expectancy tables, the remainder beneficiary may receive no discernable benefit from the use of the Remainder Sale Technique, as the assets received in exchange for the remainder may grow beyond the value of the property transferred. Indeed, if a client lives past life expectancy, one should assume traditional QPRTs will provide greater tax utility. Hence, while the Remainder Sale Technique effectively eliminates any gift tax consequences at the time of funding and while the IRS or a court *may* later decide that it eliminates any risk of estate tax inclusion, an analysis still needs to be performed in each case to determine whether this approach should be favored.

It appears the Remainder Sale Technique may best fit a limited set of circumstances. First, it may be psychologically comforting to some clients, if they want the right to live rent-free for life. This psychological comfort may encourage certain clients (who otherwise would not form a QPRT) to undertake the Remainder Sale Technique. Second, if a client dies before reaching life expectancy—particularly if a client dies within the term that otherwise might have been contemplated in a traditional QPRT—there would be a tax savings. Thus, clients with impaired life expectancies who normally would not contemplate QPRTs should now consider the Remainder Sale Technique. Finally, the Remainder Sale Technique may allow some clients to plan who just wouldn't otherwise plan with their homes, and/or who used all their gift tax exemption and refuse to incur gift tax.

On the other hand, traditional QPRTs likely outperform the Remainder Sale Technique in many circumstances. The Remainder Sale Technique loses several of the transfer tax efficiencies offered by

QPRTs.

First, with the Remainder Sale Technique, the grantor receives assets in his or her name at the time of funding the QPRT and those assets will hopefully appreciate during the grantor's life. Actuarially, in fact, these assets should appreciate to the full value of the property transferred by the time the grantor has attained his or her life expectancy under the IRS tables. Consequently, the longer the client lives, the longer the assets will appreciate, which can reduce the estate tax benefit the client initially hoped to achieve.

Second, as already noted, the lack of a reversion in the Remainder Sale Technique diminishes its transfer tax efficiency. Without a reversion, the value of the remainder interest sold will be greater.

Third, with a traditional QPRT if the client outlives the QPRT term, transfer tax savings are assured (and such savings can be insured if a client desires and is insurable). With the Remainder Sale Technique, unless the client dies before life expectancy, there may be no transfer tax benefit at all.

Fourth, renting the home at the end of a QPRT can provide huge tax benefits especially if paired with a trust treated as a grantor trust for income tax purposes (a “grantor trust”), because each rental payment made by the grantor will further reduce the grantor's estate. Further, if the payments are made to a grantor trust, the trust will receive these payments income tax-free. [19]

Therefore, when analyzing whether the Remainder Sale Technique or a traditional QPRT is more appropriate in any given situation, a number of factors should be considered, including: (1) tax savings/efficiency, (2) the client's likelihood of living to life expectancy, (3) the client's insurability, and (4) the anticipated benefits and costs of renting the home at the end of a traditional QPRT term.

In the end, it appears most clients with unimpaired life expectancies will achieve greater tax savings with traditional QPRTs; however, the Remainder Sale Technique offers a new tool for planners to consider.

PRACTICE NOTES

When analyzing whether the Remainder Sale Technique or a traditional QPRT is more appropriate in any given situation, a number of factors should be considered, including: (1) tax savings/efficiency, (2) the client's likelihood of living to life expectancy, (3) the client's insurability, and (4) the anticipated benefits and costs of renting the home at the end of a traditional QPRT term.

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A discussion of all the issues surrounding QPRTs is beyond the scope of this article. For more information, see, e.g., Choate, *The QPRT Manual: The Estate Planner's Guide to Qualified Personal Residence Trusts* (Ataxplan Publications 2004). The authors wish to thank Natalie Choate for her valuable assistance with this article.

2

Planners should note that although not an issue in the Ruling (it was stipulated the dynasty trust was independently funded), the step-transaction doctrine may apply in certain situations to these types of transactions, such as when the grantor has supplied the Purchasing Trust with the funds it uses later to purchase the grantor's remainder interest in the residence.

3

The IRS previously addressed this same issue in Ltr. Rul. 200728018 with the same outcome. Both rulings were executed by George L. Masnik, IRS Branch Chief.

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Sections 2642(f)(3) and 2642(f)(4), and Reg. 26.2632-1(c)(2).

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While such rent payments provide an effective way to reduce the grantor's taxable estate, some clients will not welcome the notion of paying rent for the use of their own home.

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See Jordan, “Sales of Remainder Interests: Reconciling *Gradow v. United States* and Section 2702,” 14 Va. Tax Rev. 671 (1995); Horowitz, “Economic Reality in Estate Planning: The Case for Remainder Interest Sales,” 73 Taxes 386 (1995); Pennell, “Cases Addressing Sale of Remainder Wrongly Decided,” 22 ETPL 305 (Sept./Oct. 1995); Jensen, “Estate and Gift Tax Effects of Selling a Remainder: Have *D'Ambrosio, Wheeler* and *Magnin* Changed the Rules?,” 4 Fla. Tax Rev. 537 (1999); Pittman, 75 AFTR 2d 95-520, 878 F Supp 833, 95-1 USTC ¶60186 (DC N.C., 1994); and Allen, 8 AFTR 2d 6055, 293 F2d 916, 61-2 USTC ¶12032 (CA-10, 1961).

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59 AFTR 2d 87-1221, 11 Cl Ct 808, 87-1 USTC ¶13711 (Cl. Ct., 1987).

8

Gradow, 59 AFTR2d at 87-1224 and 87-1225.

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78 AFTR 2d 96-7347, 101 F3d 309, 96-2 USTC ¶60252 (CA-3, 1996).

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D'Ambrosio, 101 F.3d at 314.

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D'Ambrosio, 101 F.3d at 316.

12

D'Ambrosio, 101 F.3d at 314 (citing Section 2036 (emphasis supplied in original)).

13

80 AFTR 2d 97-5075, 116 F3d 749, 97-2 USTC ¶60278 (CA-5, 1997).

14

Wheeler, 116 F.3d at 759.

15

84 AFTR 2d 99-5227, 184 F3d 1074, 99-2 USTC ¶60347 (CA-9, 1999).

16

Magnin, 184 F.3d at 1078 (quoting Merrill v. Fahs, 33 AFTR 587, 324 US 308, 89 L Ed 963, 45-1 USTC ¶10180, 1945 CB 418 (1945) (quoting Estate of Sanford, 23 AFTR 756, 308 US 39, 84 L Ed 20, 39-2 USTC ¶9745, 1939-2 CB 340 (1939))).

17

Magnin, 184 F.3d at 1079 (citing D'Ambrosio, 101 F.3d at 316, and Wheeler, 116 F.3d at 762-63).

18

Estate of Magnin, et al., TC Memo 2001-31, RIA TC Memo ¶2001-031, 81 CCH TCM 1126 .

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If the grantor of a QPRT intends to rent the residence after the QPRT term ends, the grantor must pay a fair market value rent and at the time that the residence is transferred to the QPRT, there can be no express or implied agreement that the grantor can continue to occupy the premises without paying a fair market value rent. See Estate of Barlow, 55 TC 666 (1971), *acq.*, 1972-2 CB 1; Estate of McNichol, 3 AFTR 2d 1838, 265 F2d 667, 59-1 USTC ¶11868 (CA-3, 1959), *cert. den*.; Estate of Maxwell, 72 AFTR 2d 93-6733, 3 F3d 591, 93-2 USTC ¶60145 (CA-2, 1993), *aff'g* 98 TC 594 (1992), Rev. Rul. 70-155, 1970-1 CB 189; Rev. Rul. 78-409, 1978-2 CB 234; Ltr. Ruls. 200822011, 199931028, 9829002, 9735035, 9735011, 9433016, 9425028, and 9249014. *Cf*. Ltr. Rul. 9626041 (allowing the trust to be required to retain the residence after the QPRT term, with the trustee permitted to rent the residence back to the grantor). But the retention of the right to rent was held to trigger Section 2036(a) in TAM 9146002, which dealt with a very aggressive plan involving a “lease” of a 5% interest in a personal residence. The Service distinguished *Barlow* on the ground that the property in *Barlow* was business property and the leaseback had a business purpose.

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