From: Richard Ressler [redacted]
Sent: Thursday, July 3, 2014 1:44 AM
To: Ada Clapp
Cc: Richard Ressler; John J. Hannan ([redacted] Barry J. Cohen; jeffrey E.; Eileen Alexanderson; Halperin, Alan S
Subject: Re: East 70th Street townhouse purchase

What are the "rights Debra wouldn't receive with a second life term interes=" that if given would qualify for the marital deduction? We can discuss t=morrow.

On Jul 2, 2014, at 5:52 PM, "Ada Clapp" [redacted] wrote:

Richard,

Let me see if I can articulate Jeffrey's comments and reiterate what I tr=ed to convey (not very effectively) early on in the discussion.

The split-interest property purchase is an estate planning technique design=d to fit within an "exception" to a provision of the tax Code (under S=ction 2702) that would otherwise trigger a gift tax where family members p=rchase "term" interests (such as a life interest and a remainder inter=st) in a residence. To fit within the exception, and avoid any one famil= member purchasing a term interest from making a gift to another family me=ber purchasing a term interest, each family member who participates in the=split purchase of the residence must pay the actuarial value of his or her=term interest—with his or her own funds.

If Debra uses funds Leon gives her, the IRS treats this as if Leon purchase= both his and Debra's term interests and then made a gift to Debra of h=r term interest, which gift would be taxable to Leon as it would not qual=fy for a marital deduction. To qualify for a marital deduction, the spous= must either receive the property outright or be given certain rights to t=e property which Debra would not have with a second life term interest.

Even assuming Debra is willing to use her independent funds in connection w=th a split purchase of a residence, there are other factors to consider in=deciding the best way to structure the split purchase. In addition to the=pros and cons outlined in the chart I sent you, there is a certain comfort=level regarding the transaction that should weigh into your decision.

As I mentioned in an earlier email, the split interest purchase technique o=ly works under a specific set of circumstances (it must be a new residence=purchase, each family member buying a term interest must have/use is or he= own funds—not funds recently received from any other family member part=cipating in the split purchase). This means that the technique has not bee= as widely used , and accordingly not as heavily scrutinized by the IRS, a= other planning techniques. As noted above, the split interest property p=rchase is safe harbored in the Code or regulations (like a qualified per=onal residence trust), but rather is purchase structured to fall within an=exception provided for in the Code. My understanding (I never had occasi=n to use this technique when I practiced) is that most of the split intere=t purchases that passed muster with the IRS have been structured with only=two term interests: a life interest purchased by a senior family member, =nd a remainder interest purchased by junior family members (or a trust for=their benefit). We are therefore more confident that the split-interest p=rchase will fall within the exception if structure in this manner.

Alan did find a couple of private letter rulings (not binding on the IRS wi=h respect to anyone other than the taxpayers to whom they are issued) wher= the IRS approved structures involving two life estates where all term int=rest holders acquired their interest with separate funds. However, becaus= there is less support for the two life interest structure than for the si=gle life interest structure, we have a lower confidence level with the two=life interests. I think what Jeffrey is saying below is that the marginal=benefits achieved by the two life structure (outlined on the chart I sent =ou) are outweighed by the lower comfort level and the additional risk of =udit. The risk of audit may be higher because the IRS may be keener to t=ke a look at structures that are not plain vanilla (but are instead "cl=ver" as Jeffrey puts it) to see if they fall within the exception. If i= does take a look, the two life interest structure might be fine—it jus= has a shorter track record for us to handicap it as well. Given these fa=tors, I believe Jeffrey is suggesting that the use of a single life intere=t structure.

I am happy to discuss or to arrange a conference call with Alan if you wish=to speak with him directly.

Best regards,

Ada Clapp
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445 Park Avenue
Suite 1401
New York, New York 10022
[redacted]

From: Richard Ressler [redacted]
Sent: Wednesday, July 02, 2014 5:54 PM
To: jeffrey E.
Cc: Halperin, Alan S; Richard Ressler; Ada Clapp; Barry J. Cohen; John Hann=n; Eileen Alexanderson
Subject: Re: East 70th Street townhouse purchase

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