The QPRT Manual, 1st edition, 2004:

Updates, Corrections, and Additions

This is a CUMULATIVE update, posted August 2008

This document contains updates, corrections, and additions to the 1st edition of *The QPRT Manual* by **Natalie B. Choate**, Esq. (Ataxplan Publications, 2004). This document also adds several tables that did not fit into the book in its final format, but that could be useful to the reader and researcher:

Appendix E: QPRT-PRT comparison chart. This post-publication addition to *The QPRT Manual* is a chart comparing the requirements and features of a "qualified personal residence trust" (QPRT) with those of a "personal residence trust" (PRT).

Tables of Authorities. Tables showing where sections of the Internal Revenue Code and Treasury Regulations are cited in *The QPRT Manual*.

Contents

The QPRT Manual, cumulative updates, corrections, and additions since publication in late 2004:

CHAPTER 1: HOW QPRTS SAVE TAXES

¶ 1.4.05 *Split purchase of life estate and remainder*

Change the title of this subsection to "*Split purchase of life estate and remainder; sale of remainder*."

At the bottom of p. 54 and top of p. 55, wherever it says "PLR 2001-12023," add "and PLR 2007-28018."

In the middle of p. 56, delete the paragraph that begins "Another drawback is that this only works with a new property…," and substitute the following:

"If the parent already owns the residence, practitioners accomplish the same results by having parent convey the property to a PRT in exchange for cash paid to the parent by the PRT's remainder beneficiary equal to the value of the remainder; see PLR 2007-28018 (summarized in the Update to Appendix C, at page 10 of this document) for an example of this technique."

CHAPTER 2: THE PERSONAL RESIDENCE

¶ 2.1.01 *The two big "primary use" tests*

Add a box at the end of this section:

Confusion between "used" or "held for use" as donor's residence

Unfortunately, as occasionally happens, the IRS can misread its own regulation. One sentence of Reg. § 25.2702-5(c)(7)(i) says "A residence is held for use as a personal residence of the term holder so long as the residence is not occupied by any other person (other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence." In the article "QPRTs for Co-Tenancy Interests: Do They Work?", 6 *California Trusts and Estates Quarterly* No. 3 (Fall 2000), p. 4, by John A. Hartog and Linda L. McCall, the authors cite two instances of clients who owned undivided interests in residences. In both cases, the client's issue or trusts for their issue held the rest of the ownership. The IRS advised in both cases that the residences could not be transferred to QPRTs because "the client did not have the exclusive right to occupy the property as required under" Reg. § 25.2702-5(c)(7)(i).

Nowhere do the regulations state that, in order to qualify as a donor's residence, the donor must have the exclusive right to occupy the property. Rather, Reg. § 25.2702-5(c)(7)(i) says only that the QPRT trust instrument must provide that the trust will cease "to be a qualified personal residence trust if the residence ceases to be used *or held for use* as a personal residence of the term holder" (emphasis added). The purpose of the next sentence of te regulation, the one quoted in the Hartog/McCall article, is only to define the term "*held for use"*: "A residence is *held for use* as a personal residence of the term holder so long as the residence is not occupied by any other person

(other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence." Emphasis added.

To determine whether a property is "used" as the donor's residence, we look at Reg. § 25.2702-5(c)(2)(iii), discussed here in ¶ 2.1.01. This regulation tells us that, *in order to be transferred to a QPRT in the first place*, the residence must be the donor's actual personal residence. That means that its *primary use* is as the donor's residence when occupied by the donor, and its *primary use* is as a residence when it is not occupied by the donor. There is no option to transfer to a QPRT a structure that is merely "held for use" as the donor's residence, nor is there any requirement that the donor have exclusive occupancy rights!

Only once the QPRT is up and running do we get to Reg. § 25.2702-5(c)(7)(i). That regulation (discussed at ¶ 2.2.04) deals with what happens if the donor ceases to use the property as his residence after the QPRT has already begun. Then, as a matter of grace, the IRS allows the QPRT to continue (despite the residence no longer being the donor's actual residence) *provided* it is "held for use" as the donor's residence…and the definition of "held for use" involves the exclusive occupancy by the donor and/or his spouse and dependents.

When a residence is owned by the would-be QPRT donor as a co-tenant with other owners, there are serious problems regarding whether the property can be placed in a QPRT; see ¶ 2.3.02. But those problems do not arise from Reg. § 25.2702-5(c)(7)(i)! Fortunately, the IRS seems to have straightened out on this issue since these authors' negative experience in 2000; current rulings appropriately refer to the *primary use* requirements for qualification as a personal residence, rather than an *exclusive occupancy* test. See e.g. PLRs 2006-26043, 2007-29004.

¶ 2.4.04 *Easements for conservation, historic preservation*

For more rulings where QPRT property was subject to a conservation easement or restriction, see PLRs 2006-17035 and 2007-51022 (Appendix C).

CHAPTER 3: DRAFTING THE QPRT

¶ 3.1.07 *What rights or powers constitute a "reversion?"*

This section points out that a mere power of disposition retained by the donor may not meet the IRS definition of a "reversion" for gift tax purposes. Upon further reflection, regardless of whether the retained power of disposition constitutes a "reversion," it has the effect of making the gift of the contingent remainder incomplete. As an incomplete gift, it should not be a taxable transfer. This argues in favor of allowing the deduction for a retained power of disposition just as for a retained reversionary interest.

¶ 3.4.05 *Language attempting to limit estate inclusion*

A MAJOR change here: Contrary to the skeptical warning in this section, the IRS has reversed its position on this issue, so now it is highly recommended to INCLUDE language limiting

the reversion to the donor's estate if the donor dies after the QPRT has converted to a GRAT. A form for this has not yet been added to *The QPRT Manual*. See ¶ 4.6.03 in this Update.

¶ 3.5.05 *Other ways to preserve "amendability"*

At the end of this subsection (p. 151), add: "For a ruling in which the parties were allowed to modify the remainder provisions of a QPRT (and other irrevocable trusts), see PLR 2008-04013."

CHAPTER 4: GIFT AND ESTATE TAX TOPICS

¶ 4.4.02 *Why spouses should not split QPRT gifts*

Add at the end of this section: "Nevertheless, some spouses do elect to split gifts in the year one or both make QPRT gifts. See PLRs 2005-19006, 2007-16008."

¶ 4.4.06 *Who is the donor? "Step transaction" problems*

In the second-to-last paragraph of this section (p. 217), insert the following after the sentence "There is obviously no bright line test as to how much time is enough, but presumably a few months should be sufficient.":

See *H. Holman, Jr.*, 130 TC 12 (5/27/08) (not a QPRT case), in which a two-month passage of time between formation of a family partnership and gifts of interests in the partnership was "effectively conceded" (to quote an article on this case from *Trusts & Estates*) by the IRS to be sufficient to negate application of the step transaction doctrine, and in which the court held that *six days* were sufficient.

¶ 4.4.07 *Simultaneous QPRTs and the reciprocal trust doctrine*

Add to list of rulings under Example 2 (p. 220), PLR 2006-17002.

¶ 4.6.03 *Limiting estate inclusion after GRAT conversion*

The last paragraph of this section, on p. 233, has been rendered obsolete by issuance of a new regulation. Surprisingly, the final regulation reverses the IRS position taken in PLR 2002-10009. The new rule is: "The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained use or retained annuity, unitrust, or other payment (without reducing or invading principal) as determined in accordance with Sec. 20.2031-7 (or Sec. 20.2031-7A, if applicable). The portion of the trust's corpus includible in the decedent's gross estate under section 2036, however, shall not exceed the fair market value of the trust's corpus at the decedent's date of death." Reg. § 20.2036-1(c)(2)(i), as amended July, 2008 (T.D. 9414).

¶ 4.6.04 *Donor's rent-free use causes estate inclusion*

For another case where retained rent-free use caused estate inclusion, see *Estate of Margo Stewart*, T.C. Memo 2006-225 (not a QPRT case), discussed in Leimberg's *Estate Planning Newsletter* #1043.

The IRS's imputed agreement argument can be overcome with evidence. In PLR 2006-17002 (see Appendix C), the IRS apparently didn't even raise this argument. The evidence showed that the donors' daughters (the remainder beneficiaries of the QPRT) did not even know they were entitled to ownership and possession of the property at the end of the QPRT term, and accordingly could not have been found to have agreed to relinquish rights they didn't know they had.

CHAPTER 5: CONQUERING THE GST TAX

The IRS issued final regulation § 26.2632-1, dealing with allocation of the GST exemption, after publication of *The QPRT Manual*. Accordingly *The QPRT Manual* should not be relied upon in connection with allocation of the GST exemption. A detailed update on this subject will be posted at a later date.

See Prop. Reg. § 26.2642-7, regarding obtaining IRS permission to make a late allocation of GST exemption (or late election out of allocation, or other late GST elections).73 FR 20870, April 17, 2008.

See PLRs 2005-19006, 2006-13006, and 2007-16008, in which the IRS granted extensions of time to taxpayers to make elections regarding allocation of GST exemption to their QPRTs based on errors or "failure to advise" by their professional advisors.

¶ 5.2.06 *Who uses/should use which QPRT-GST approach?*

Add to the list of PLRs at the end of this section (QPRTs that were to benefit donor's "issue," not just donor's "children"): PLRs 2005-19006, 2006-13006, and 2007-16008.

¶ 5.5.04 *Provide that child's share passes to his estate?*

For a variation of this, see PLR 2006-17002, where two QPRTs that were to pass to the donor-spouses' four daughters would pass to the estate of the last daughter to die if all daughters died before the end of the QPRT term.

CHAPTER 6: INCOME TAX ISSUES

¶ 6.1.05 *Grantor trust status: After the term ends*

Add on p. 297, at the end of the subsubsection entitled "How to achieve (or avoid) grantor trust status after the term ends":

Several readers have asked why I did not provide more material on how to achieve grantor trust status for a QPRT after the QPRT term ends. The reason is that, at that point, the QPRT is no

longer a QPRT; it is just like any other irrevocable trust. Therefore there is nothing particularly distinctive about how grantor trust status is achieved for a post-QPRT-term QPRT versus any other kind of irrevocable trust. For discussion of that subject, refer instead to PLR 2006-03040 (discussed in Leimberg's *Estate Planning Newsletter* #921); PLR 2007-30011 (discussed in Leimberg's *Estate Planning Newsletter* #1156); overview discussion in Leimberg's *Estate Planning Newsletter* #1157 (8/1/07), by Jonathan E. Gopman, *et al.*; and IRS Notice 2007-73 (discussed in Leimberg's *Estate Planning Newsletter* #1161).

CHAPTER 7: QPRTS IN OPERATION

¶ 7.1.01 *Reforming a QPRT*

Change the title of this section to "*Reforming or modifying a QPRT*," and add at the end of this subsection (p. 316):

"For a ruling in which the parties were allowed to modify the remainder provisions of a QPRT (and other irrevocable trusts), see PLR 2008-04013."

¶ 7.1.04 *Donor's poor health: commutation of trust interests*

At the end of this subsection (p. 322), add:

Another concern with commutation is the amount of income the donor would realize as a result. See PLR 2007-33014 (not a QPRT ruling), in which the IRS ruled that, upon commutation of the interest of the donor and life beneficiary of a charitable remainder trust, the donor-beneficiary realized long-term capital gain equal to the entire commutation proceeds; the donors were not allowed to offset any basis against the gross sale proceeds in computing their gain.

¶ 7.1.06 *Decline in donor's financial circumstances*

P. 323: When the QPRT has sold the residence, and not reinvested all the proceeds in another residence, it continues to hold the unreinvested proceeds in the trust and pays the donor an annuity from these unreinvested proceeds (see ¶ 3.3.06 and ¶ 7.2.06). If the donor has unanticipated financial needs, the donor may want to accelerate the annuity payments. If the trust permits amendments (see ¶ 3.5.05), the trust could be amended to permit such acceleration (with a discount to reflect prepayment). Even without a formal amendment, possibly the trustee could allow the donor to have a lump sum equal to the present value of the future annuity payments. If the donor dies within the term, such a prepayment harms noone because the fund supporting the annuity reverts to the donor's estate in those circumstances anyway (see ¶ 4.6.03 in this Update). If the donor survives the term, the remainder beneficiaries have not "lost" anything, assuming the lump sum paid to the donor in lieu of his future annuity payments was correctly valued.

¶ 7.3.03 *If the donor cannot (or does not want to) pay rent at the end of the term*

For a novel and successful but not recommended solution to this problem, see PLR 2006-17002 (Appendix C).

Add a new section at the end of Chapter 7:

¶ 7.4 When things go wrong

What happens when the QPRT wasn't set up properly or didn't operate properly?

For example, what if the deed transferring the residence to the QPRT was never recorded? Was the gift incomplete? That depends on local law and all the facts and circumstances. In *Estate of Margo Stewart*, T.C. Memo 2006-225 (not a QPRT case), a deed gifting an undivided interest in real estate was never recorded, but the gift was still held to be complete under applicable state law (New York). See Leimberg's *Estate Planning Newsletter* #1043.

APPENDIX B: FORMS

In the sample QPRT form, in five headings on four different pages, the word "DONOR'S" was used. This should be changed to "TRANSFEROR'S" to be consistent with the rest of the document. Thanks to Allen Koenig, Esq., of Boston for catching this error.

On: Page 382 (Article V(C) under "Approach #1"),
Page 384 (Article V(C) under "Approach #2"), and
Page 386 (Article V(C) under "Approach #3"):

Change "DISPOSITION TO DONOR'S DESCENDANTS" to
"DISPOSITION TO TRANSFEROR'S DESCENDANTS."

On page 394, headings (1) and (2) of optional Article VI(C):

Change "(1) DONOR'S CONSENT REQUIRED…" to "(1) TRANSFEROR'S CONSENT REQUIRED…"
and change "(2) DONOR'S RIGHT OF FIRST REFUSAL…" to "(2) TRANSFEROR'S RIGHT OF FIRST REFUSAL…"

APPENDIX C: QPRT PRIVATE LETTER RULINGS

Here is a continuation of the list of all published QPRT rulings, through mid-2008:

2005-19006. 1. GST tax: remainder to "issue." 2. Extension of time granted for late allocation of GST exemption to a QPRT. 3. Split gifts.

The remainder beneficiaries of the QPRT were not just the term-holder's children but also her grandchildren. The husband and wife elected on their gift tax returns to split their gifts (see ¶ 4.4.02). They were not advised by their "tax professionals" to allocate GST exemption to the QPRT, nor did they file any gift tax return for the year the QPRT term expired (and the ETIP ended). The IRS granted them extensions of time to make the applicable elections.

2006-13006. Not specified whether residence was principal or "other." 1. Fractional interest conveyed. 2. Allocation of GST exemption.

1. Taxpayer conveyed a one-half interest in her residence to a QPRT.

2. Upon expiration of the QPRT term, the property was held in further trust for the taxpayer's child for a term of years. If child survived that term, the property would be distributed outright to child; otherwise it would be held in further trust for child's descendants. A gift tax return was filed for the transfer to the QPRT. No GST exemption was allocated at that time, either intentionally or automatically. Under § 2632, however, an automatic allocation of GST exemption to the trust occurred upon expiration of the QPRT term. Taxpayer's advisors failed to advise her to make the election out of automatic allocation, so the IRS granted her an extension of time to elect out.

2006-17002. Principal residence. 1. Reciprocal trusts (not). 2. GST tax avoided. 3. Breach of trust by donor-trustees; remainder beneficiaries enforce the QPRT.

This is an extraordinary ruling, where everything was done right to fix a situation where everything had gone wrong!

1. Husband and wife each conveyed a one-half interest in their joint principal residence to mirror-image eight-year QPRTs. Under both trusts, upon expiration of the terms, the residence was to pass outright to the couple's four daughters. Note that these trusts avoided the reciprocal trust issue discussed at ¶ 4.4.07 by not having either spouse grant any interest to the other.

2. If all daughters were deceased upon the expiration of the QPRT term, the remainder would pass to the estate of the last daughter to die; see ¶ 5.5.04.

3. Subsequently, the wife "developed severe health problems and became distressed regarding the loss of Residence on the termination of the QPRTs." So, eight months before the two trusts were to expire, the spouses, as trustees, wrongfully conveyed the residence to their own respective revocable trusts. The daughters "were not consulted, advised of, or aware of" this transfer. They became aware of the whole thing only several years later, when the residence was being sold. At that time, the daughters on advice of counsel demanded that the sale proceeds be paid to them. The father died meanwhile; his estate and the mother agreed to settle the matter by paying the sale proceeds to the daughters. The IRS ruled that there was no gift from parents to the daughters in the settlement proceeds, because the daughters were legally entitled to this money. The IRS also ruled there was no gift from the daughters to the mother and father arising from the parents' wrongful re-

taking of the property because the daughters were not aware of this and didn't consent to it, so they did not "relinquish or otherwise transfer" their remainder interests.

Several points about this ruling. First, when parents retain possession of the gifted property, rent-free, following the "gift," the IRS normally imputes an implied agreement that the parents could remain in the property, thus causing inclusion of the property in the parent's estate under § 2036. See ¶ 4.6.04. That presumption did not apply here, apparently, because the daughters (being unaware of the QPRTs altogether, apparently) were not parties to any such "agreement." The IRS can impute this kind of agreement only when the parents are staying on in the property with the acquiescence of the younger generation that doesn't enforce its apparent ownership rights.

Second, the lack of knowledge by the daughters creates a question regarding whether the gift to them was ever completed. Can a gift be complete if no one tells the donee? But apparently, the QPRTs and the deeds in to the QPRTs were a matter of public record, so perhaps that substitutes for actual knowledge by the donee.

Third, the daughters accepted, in full settlement of their claims, the sale proceeds of the residence. Apparently they were not compensated for the missing rent the parents never paid for the parents' post-QPRT-term occupancy. Thus, by doing absolutely the wrong thing (stealing the residence back from their own QPRTs), the parents achieved an estate plan nirvana denied to the rest of us—they enjoyed life-long (in the case of the father at least) continued free occupancy of the residence, but still kept the property out of the estate!

2007-16008. Type of residence not specified. 1. Potentially generation-skipping trust established. 2. Gift-splitting. 3. Extension of time granted for GST exemption allocation.

1. The remainder beneficiaries of the donor-spouse's QPRT were three separate trusts for the benefit of the donor's three children *and their respective issue*.

2. The spouses filed gift tax returns agreeing to split their gifts.

3. The spouses did not allocate GST exemption to the trusts on their gift tax returns reporting the original gift, because of the ETIP (see ¶ 5.2.01). They "failed" to allocate exemption to the trust for the year when the QPRT term and ETIP expired. They were granted an extension of time to make the allocation because apparently they relied in good faith on a qualified tax professional.

2006-17035. Vacation residence. 1. Appurtenant structure. 2. Acreage. 3. Multiple parcels; subdivided property. 4. Commercial vs. residential use. 4. Conservation easement.

The only ruling sought, and granted, was whether the transferred property constituted a personal residence.

1. The structures besides the single-family residence were a "bathhouse" ("a roof over a small outdoor bathtub") and a "pavilion" ("one-room structure with no plumbing").

2, 3. The property was "on an island that is agricultural, rural and sparsely populated. Property consists of two contiguous parcels totaling X acres which constitute a portion of a larger tract owned by Settlor." The structures were on one of the parcels and the sole access road extended across the other parcel. The size of the property was "comparable to that of nearby properties used for residential purposes." There is no indication whether the settlor's other land was excluded from the QPRT because the settlor didn't want to contribute it, or the IRS wouldn't let him.

4. "No commercial activity is conducted" on the property.

5. The settlor was going to place a qualified conservation easement on the property prior to conveying it to the QPRT.

2006-26043. Second residence. 1. Structures. 2. Multiple parcels; subdivided property.

The only ruling sought, and granted, was whether the transferred property constituted a personal residence.

1. The structures besides the single-family residence were a detached garage, artist studio, and bunk house.

2. Grantor proposed to subdivide his property, and transfer only one of the subdivided parcels to the QPRT. The parcel constituted more than one lot for property tax purposes. The amount of acreage of the total parcel and parcel to be conveyed to the QPRT are not revealed in the published version of the ruling; the IRS concluded that the size of the parcel was "comparable to that of properties in proximity to Parcel used for residential purposes," so the acreage was "reasonably appropriate."

3. The property was used "exclusively" as the grantor's second residence; though the grantor allowed "guests to vacation in the guest house" (would that be the bunk house?), no part of the property was "rented out for commercial purposes," and "No individual other than Grantor has the right to use or occupy Property." The IRS ruled the property satisfied "the primary use requirements of section 25.2702-5(c)(2)(iii)" (see ¶ 2.1.01).

2007-28018. Second residence. 1. Sale of remainder interest in PRT. 2. Structures. 3. Multiple parcels; subdivided property.

This extremely important ruling shows how to get the benefits of a "split purchase" for an existing property the parents already own (which *The QPRT Manual* ¶ 1.4.05 said couldn't be done!), through sale of a remainder interest in the QPRT.

1. The residence was to be conveyed by husband and wife to a joint PRT in which they retained a joint and survivor life estate. The transfer to the PRT was to be in exchange for consideration paid by a separate Purchasing Trust. The Purchasing Trust would pay the parents "cash and marketable securities" with an aggregate fair market value equal to the value of the remainder interest in the PRT, computed based on the § 7520 rate and an expert appraisal of the property. Upon the death of the surviving spouse, the property would pass to Purchasing Trust, of which the beneficiaries were the spouses' issue. The trustee (not husband or wife) could also distribute "corpus" to charity during the life of husband or wife. Purchasing Trust had been established by husband "in Year __"; it is not clear how far in advance of the PRT transaction Purchasing Trust was established, nor how or when it received sufficient funding to carry out the purchase of the remainder.

The taxpayers sought three rulings: that the property was a personal residence; that the transfer of the residence to the PRT qualified for the exception to the special valuation rule of § 2702, under the PRT exception; and that the transaction did not constitute a gift, because adequate consideration was received for the remainder interest. The IRS granted all three rulings. However, the IRS expressed "no opinion" regarding whether the trust would be includible in the estate of either spouse under § 2036.

2. The structures on the property to be conveyed to the PRT were main living quarters, pool house, guest cottage "with no bedrooms or kitchen," garage, and barn with two attached guest rooms "which are used by guests in the summer and by the Property's caretaker in the winter."

3. Husband and Wife owned the original property through a nominee trust, which they proposed to terminate. Following termination, this property would be owned by the spouses as tenants by the entireties. Following this conveyance, they would subdivide the property into two parcels, one of which, "approximately a acres of land," on which all the above structures were located, would be conveyed to the PRT.

2007-29004. Other residence. 1. Subdivided property. 2. Conservation easement. 3. IRS refusal to rule.

1. Grantor would subdivide his property and convey only one parcel to the QPRT. No indication of the size of either parcel, or why grantor was not conveying the entire property to the QPRT.

2. The grantor proposed to place a conservation easement on the parcel that was NOT being conveyed to the QPRT.

3. The IRS ruled favorably on the status of the property as a "residence," but refused to rule on whether the trust was a QPRT or the retained annuity (if the QPRT converted to a GRAT) would be a qualified annuity interest, citing Rev. Proc. 2007-3 (the update to Rev. Proc. 2003-42, Section 3, discussed under the heading "Form 1" of Appendix B of *The QPRT Manual* (p. 353)).

2007-51022. Not specified whether residence is "principal" or "other." 1. Structures. 2. Acreage. 3. Conservation restriction. 4. QPRTs holding fractional interests. 5. Nominee trust. 6. Occupancy by others (tenant).

1. Structures: There were seven buildings on the property: main house, two free-standing garages, a maintenance building, two greenhouse buildings, and a Caretaker House.

2. The property is "approximately a acres in size…assessed as one parcel for local property tax purposes and is similar in size and configuration to other nearby properties." Oddly, the ruling does not recite that the similar nearby properties were residences.

3. "Property is subject to a conservation restriction that restricts future use and development…to preserve its natural, open and scenic condition and maintain its character."

4, 5. The grantor proposed to convey the property to a nominee trust of which the beneficiaries would be three QPRTs holding fractional interests "in the nominee trust."

6. The grantor proposed to rent the Caretaker House to an unrelated third party for $d. The grantor would provide "no services…other than ordinary maintenance" to the tenant. The IRS ruled that the property was a personal residence because "The primary use of Property is as a residence of Grantor."

2008-04013. Court-approved modification of QPRT remainder provisions blessed by IRS.

The parties were allowed to modify the remainder provisions of a QPRT (and other irrevocable trusts) through a court procedure under applicable state law "to better serve the interests of Child A and Child B [the primary remainder beneficiaries of the QPRT] and to reduce administrative costs," without adverse tax consequences. See ¶ 7.1.01.

2008-14011. Reverse QPRT! Not specified whether this was a principal or "other" residence.

This QPRT involved mother's residence which she gave to a 10-year QPRT. At the end of the 10-year term, the property vested in son and daughter, and mother retained occupancy, leasing the property from son and daughter. Now son and daughter proposed to contribute the property to a new, one-year, QPRT, of which mother would be the term-holder, with the right to occupy the property rent-free for one year or until the earlier death of one (both?) of the settlors.

Normally, the IRS will not rule on whether a trust constitutes a QPRT, because the IRS has issued sample QPRT forms taxpayers can rely on. The IRS agreed to rule on this one because of the unusual facts, and did rule favorably. However, the IRS expressed "no opinion" about whether the residence would be included in mother's estate under § 2036 if she died during the one-year QPRT term.

Why was this done? An educated guess: Mother didn't want to (or could not afford to) pay rent to the children at fair market value for her continued occupancy of the residence. If she stayed on without paying rent, there would be a serious risk of the property's being included in her estate as a gift with retained life estate, since the IRS would "presume" there was an agreement all along for her to stay on rent-free. The one-year QPRT doesn't preclude the IRS from raising this argument if mother dies during the term, but it does provide pretty good evidence that the mother's occupancy rent-free was not due to a prior agreement—it was due to a post-QPRT temporary gift back by the children. A one-year term might have been chosen to keep the gift tax value of the children's gift low, possibly within the annual exclusion amount.

2008-16025. Another reverse QPRT!

This ruling is almost word-for-word identical to PLR 2008-14011, except that the remainder beneficiaries here were Son 1 and Son 2 (instead of Son and Daughter) and the QPRT term here was eight years (not 10 years).

BIBLIOGRAPHY

Add to Bibliography, under "Articles":

Hartog, John A., Esq., and McCall, Linda L., Esq., "QPRTs for Co-Tenancy Interests: Do They Work?", 6 *California Trusts and Estates Quarterly* No. 3 (Fall 2000), p. 4.

Jacobs, Deborah L., "How Interest Rates Affect Trusts," *Fidelity Investor's Weekly,* 9/25/06.

Ware, Jeremy T., Esq., "Using QPRTs to maximum Advantage for Wealthy Clients," 32 *Estate Planning* 11 (Nov. 2005), p. 34.

Appendix E

QPRT–PRT Comparison

This chart shows the differences between personal residence trusts (PRTs) and qualified personal residence trusts (QPRTs). Citations to Reg. § 25.2702-5 begin with -5; "Reg. § 25.2702" is omitted. Column A describes the provision with a cross reference to the section of *The QPRT Manual* that discusses it. Column B shows what the QPRT is permitted to do with respect to that topic (with citation). Column C indicates either that the PRT rule is the same ("Same") or what the PRT rule is if it is different.

A. Provision	B. QPRT	C. PRT
Definition of personal residence. ¶ 2.1	Principal residence plus one other residence, or undivided interest in either. -5(c)(2)(i).	Same. -5(b)(2)(i).
"Home office," certain part-year rentals. ¶ 2.4.02, ¶ 2.2.03.	Permitted. -5(c)(2)(iii).	Same. -5(b)(2)(iii).
Appurtenant structures (¶ 2.5.04), adjacent land (¶ 2.5.02–2.5.03).	Permitted. -5(c)(2)(ii).	Same. -5(b)(2)(ii).
Residence must be "used or held for use" as donor's residence. ¶ 2.2.04.	Definition at -5(c)(7)(i), second sentence.	Same definition; -5(b)(1), second sentence.
Maximum number of residences in trusts at one time ¶ 2.1.05.	Two. -5(a)(1).	Same. -5(a)(1).
Reformation of trust to comply with regulation. ¶ 7.1.01.	Permitted. -5(a)(2).	Same. -5(a)(2).
Spouses may contribute to same trust. ¶ 4.4.05(2).	Yes. -5(c)(2)(iv).	Same. -5(b)(2)(iv).
Trust income distribution. ¶ 3.2.01(4).	Required annually. -5(c)(3).	No provision on this subject.
Trust distributions to persons other than donor. ¶ 3.2.01(5).	Must be prohibited. -5(c)(4).	No provision on this subject.

Assets trust may hold in addition to residence. ¶ 3.2.01(1).	Cash for expenses, improvements, purchase of residence. -5(c)(5)(ii)(A). Improvements to residence. -5(c)(5)(ii)(B). Proceeds of sale of residence. -5(c)(5)(ii)(C). Casualty insurance policies. -5(c)(5)(ii)(D). Proceeds of casualty insurance, condemnation awards. -5(c)(5)(ii)(D).	ONLY "qualified proceeds," defined as proceeds of casualty insurance or condemnation awards, but must be reinvested in two years. -5(b)(3).
What happens if trust property ceases to be donor's residence (or permitted proceeds are not reinvested within two years). ¶ 3.3.04.	Residence (or unreinvested proceeds) distributed to donor outright or in the form of annuity payments. -5(c)(7).	Unclear. Trust forbidden to hold property that is not donor's residence (or "qualified proceeds"). -5(b)(1).
Commutation of donor's interest. ¶ 3.2.06.	Prohibited. -5(c)(6).	No provision, so a PRT may either permit or prohibit commutation.
Sale of residence. ¶ 3.3.01.	Permitted, subject to exception below, provided trust contains certain provisions regarding proceeds. -5(c)(7)(ii).	Sale of residence, or any other transfer of the residence, not permitted during the term. -5(b)(1), third sentence.
Sale of residence to donor, spouse, controlled entity during the term. ¶ 3.2.07.	Prohibited. -5(c)(9).	Not applicable, because *all* sales are prohibited during the term (see above).
Sale of residence to donor, spouse, controlled entity after the term. ¶ 3.2.07.	Prohibited so long as trust is a "grantor trust." -5(c)(9).	Same. -5(b)(1), fourth and fifth sentences.
Conversion to a "GRAT." ¶ 3.4.	Permitted for trust assets that lose "QPRT status." -5(c)(8)(ii).	Not applicable.

THE QPRT MANUAL: TABLE OF AUTHORITIES (WEB ONLY)

TABLE I: INTERNAL REVENUE CODE SECTIONS CITED

TABLE II: CITATIONS TO THE QPRT REGULATION
Treas. Reg. § 25.2702-5

TABLE III: CITATIONS TO THE OTHER IRS REGULATIONS