

Part III - Administrative, Procedural, and Miscellaneous

Guidance for Persons Making Transfers in Trust After December 31, 2009

Notice 2010-19

PURPOSE AND BACKGROUND

This notice alerts taxpayers that the Internal Revenue Service (IRS) intends to issue guidance under section 2511(c) of the Internal Revenue Code. Congress enacted this section in section 511(e) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and amended it in section 411(g)(1) of the Job Creation and Worker Assistance Act of 2002. Public Laws 107-16, 115 Stat. 71, and 107-147, 116 Stat. 46. Section 2511(c) is effective for transfers made after December 31, 2009, and before January 1, 2011.

Section 2511(a) generally provides that the gift tax shall apply to transfers in trust or otherwise, whether direct or indirect. Under § 25.2511-2(b) of the Gift Tax Regulations, a gift is complete when the donor parts with sufficient dominion and control as to leave in the donor no power to change its disposition. Section 2511(c) provides that, notwithstanding any other provision of section 2511 and except as provided in regulations, a transfer in trust shall be treated as a transfer of property by gift unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1. The Joint Committee on Taxation's explanation of

section 2511(c) provides that certain transfers in trust are treated as transfers of property by gift even though such transfers would have been regarded as incomplete gifts, or would not have been treated as transfers under the gift tax provisions in effect prior to 2010. Joint Committee on Taxation, Technical Explanation of the "Job Creation and Worker Assistance Act of 2002" (JCX-12-02), March 6, 2002.

INTERIM PROVISIONS

Some taxpayers may have inaccurately interpreted section 2511(c) as excluding from the gift tax transfers to a trust treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1, even though those transfers would otherwise be taxable under Chapter 12. The provisions of Chapter 12 regarding the substantive law applicable to the gift tax were not amended by EGTRRA, and those provisions continue to apply to all transfers made by donors during 2010.

Section 2511(c) is an addition to those substantive law provisions and is applicable to transfers made in 2010. Section 2511(c) broadens the types of transfers subject to the transfer tax under Chapter 12 to include certain transfers to trusts that, before 2010, would have been considered incomplete and, thus, not subject to the gift tax.

Accordingly, each transfer made in 2010 to a trust that is not treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1 is considered to be a transfer by gift of the entire interest in the property under section 2511(c). The provisions of Chapter 12 as in effect on December 31, 2009, continue to apply (both before and during 2010) to all transfers made to any other trust to determine whether the transfer is subject to gift tax.

EFFECTIVE DATE

This notice is applicable to transfers made in trust after December 31, 2009. The Treasury Department and the IRS intend to issue regulations to confirm the conclusions set forth in this notice.

DRAFTING INFORMATION

The principal author of this notice is Laura Urich Daly of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Laura Urich Daly on (202) 622-3090 (not a toll-free call).