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Technical Advice Memorandum 199941013

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INTERNAL REVENUE SERVICE

NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-104569-99

LEGEND:

Decedent =

School =

Father =

Grandchild 1 =

Grandchild 2 =

Issue

Whether prepaid tuition payments made by Decedent on behalf of Grandchild 1 and Grandchild 2 to School, an educational institution described in section 170(b)(1)(A)(ii) of the Internal Revenue Code, qualify as qualified transfers for purposes of the gift tax exclusion under section 2503(e).

Conclusion

The prepaid tuition payments made by Decedent to School qualify as qualified transfers under section 2503(e).

Facts

Beginning in 1994, the Decedent entered into a series of tuition payment arrangements with School, a private school providing classes for preschool through 12th grade. Under the arrangements, School sent Decedent an invoice covering tuition for her two grandchildren, Grandchild 1 and Grandchild 2, for multiple future years.

The Decedent made the following payments:

February 16, 1994 . . . \$18,015 for tuition for 1994-1995.

June 1, 1994 . . . \$49,395 for tuition for 1995-1996, 1996-1997, and 1997-1998.

February 16, 1995 . . . \$20,000 for tuition for 1998-1999.

July 30, 1996. . . \$94,000 for tuition for 1999-2000, 2000-2001, 2001-2002, 2002-2003, and 2003-2004.

Grandchild 1 and Grandchild 2 were students at School during the years the above payments were made by Decedent. With the exception of the February 1994 payment, all payments were for tuition for years other than the year in which the payment was made. Beginning with the June 1994 payment, Decedent and School entered into written agreements regarding the payments. Under the agreements, the payments were to be applied in payment of tuition for Grandchild 1 and Grandchild 2 for specified years. The payments were not refundable. If, for example, the grandchildren ceased to attend School, then School would retain the funds. Furthermore, Decedent and Father, the parent of Grandchild 1 and Grandchild 2, agreed that if the cost of tuition at School increased, with respect to any year, then School would be paid the additional funds necessary to cover the increase in tuition cost. Father provided a letter to the School confirming his agreement to pay any tuition increase not paid by Decedent.

Law and Analysis

Section 2503(e)(1) provides that any "qualified transfer" shall not be treated as a transfer of property by gift. Under section 2503(e)(2)(A), a qualified transfer includes: any amount paid on behalf of an individual (A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual.

Section 25.2503-6(b)(2) of the Gift Tax Regulations provides that the unlimited exclusion is permitted for tuition expenses of full-time or part-time students paid directly to the qualifying educational organization providing the education. The exclusion is available only for amounts paid as direct tuition costs. Section 25.2503-6(c), Example 2, considers a situation where the donor, A, transfers \$100,000 to a trust the terms of which require the trustee to use the trust funds to pay tuition expenses for A's grandchildren. The example concludes that A's transfer to the trust is a completed gift for gift tax purposes and is not a direct transfer to an educational organization and does not qualify for the unlimited exclusion under section 2503(e).

In the instant case, Grandchild 1 and Grandchild 2 were attending School during the periods the payments were made. Decedent paid the amounts to School in payment of specified tuition costs with respect to designated individuals. The payments were not subject to refund and were to be forfeited in the event the grandchildren ceased to attend School. Thus, the payments were made directly to an educational organization to be used exclusively for the payment of specified tuition costs for designated individuals. Accordingly, the payments constituted an "amount paid on behalf of an individual as tuition to an educational organization ...for the education or training of such individual", for purposes of section 2503(e)(2). This is in contrast to the situation presented in section 25.2503-6(c), Example 2, where the payments were not made to an educational organization in payment of specific tuition costs for a designated individual.

Accordingly, we conclude that Decedent's payments qualify as qualified transfers under section 2503(e).

Caveat

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.