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The Art of the Gift: IRS Finds Gift of Artwork to Museums with Option to Revoke Is Still a Completed Gift

In a recently issued Private Letter Ruling (PLR 201825003), the Internal Revenue Service (IRS) held that a donor's gift of works of art, in which the donor retained a life interest via a usufruct to two museums, would be a completed gift for U.S. gift tax purposes even though the donor reserved the option to terminate the gift under certain circumstances. In so holding, the IRS concluded that because the options for revocation were not within the control of the donor, she did not retain sufficient dominion and control over the donated art to cause the gifts to be incomplete.

According to the facts set forth in the PLR, the donor and her late husband intended to donate a number of works from their art collection to two non-U.S. museums. Before her husband's death, they entered into a deed of transfer (the Deed) with the museums, granting legal title and the remainder interest in the works to the museums and expressly reserving a usufruct interest in the works that would terminate at the death of the surviving spouse. Similar to a life estate, a usufruct is a civil law concept referring to the right to use and enjoy property for a defined period of time without damaging or diminishing it. Pursuant to the Deed, the donor was permitted to retain physical possession of the artworks during her life, but was prohibited from selling or otherwise disposing of the works.

The Deed also gave the donor the option to revoke the gifts under a number of conditions, including failure by the museum to comply with certain care and custody requirements, changes to foreign law, and privatization of the museum. The Deed also provided that if the IRS determined that the grants to the museums were completed gifts for federal gift tax purposes, which the Deed explicitly stated was not the donor's intent, the Deed would not come into force.

Ultimately, the IRS concluded that, but for the provision requiring a favorable ruling by the IRS, the gifts were complete. Citing Treasury Regulations § 25.2511-2(b), the IRS discussed that a gift is considered complete where the donor has parted with all dominion and control of the property such that the donor has no power to change its disposition. Only where the donor reserves power over the disposition of the property will the gift be considered incomplete. Applying this fact-specific inquiry, the IRS concluded that the donor did not retain sufficient dominion and control over the works of art to cause the gifts to be considered incomplete. Although the donor retained the option to revoke the gifts if particular conditions were met, the IRS did not consider this to amount to retained dominion and control by the donor because the conditions set forth in the Deed were not dependent on any act of the donor and thus entirely beyond her control. As such, her ability to revoke the gift did not amount to a retained interest in the artworks that would make the gifts incomplete. Based on that rationale, the IRS concluded that the donor's grant to the museums of the remainder interest in the artworks would be a completed gift for federal gift tax purposes notwithstanding her intent and conditional option to revoke the gift.

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