

#L-1029

ns12
10/30/86

First Supplement to Memorandum 86-88

Subject: Study L-1029 - Marital Deduction Gifts (Comments on Draft
of Tentative Recommendation)

Enclosed are comments of State Bar Team 4 on the draft tentative recommendation relating to marital deduction gifts attached to Memorandum 86-88. We will discuss these comments orally as the Commission reviews the draft at the meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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PLEASE REFER TO
FILE NO.

October 15, 1986

James V. Quillinan, Esq.
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FEDERAL EXPRESS

Re: LRC Memorandum 86-88, Marital Deduction

Dear Jim:

On October 14, 1986, Team 4 (Richard Polse, Harley Spitler, Janet Wright, Jim Willett, and I) and Bob Mills discussed LRC Memorandum 86-88, Marital Deduction. Our comments are as follows:

1. Section 21100. Definitions.

- A. As a general matter, Team 4 believes that the definitions presented in this section warrant a thorough review and substantial revision. The suggestions set forth below are general in nature; refinements and redrafting are encouraged.
- B. Although we do not have a solution, Team 4 is concerned that when two or more definitions of a word appear in the Probate Code (e.g., "decedent"), that practitioners may become confused.
- C. We suggest that the order of the words defined in Section 21100 should be:
 - (a) "Instrument";
 - (b) "Decedent";
 - (c) "Fiduciary".
- D. With respect to the definition of "Decedent", we suggest that the word "owner" be added after the word "grantor" and that the definition (the sentence) end after the word "instrument" (second line, fifth word).

E. We suggest that "instrument" be defined as "a will, trust, deed, beneficiary designation or any other writing that makes a disposition of property on a person's death." (suggested new wording underlined).

2. Section 21500. "Internal Revenue Code" defined.

A. After the President signs the Tax Reform Act of 1986, the Internal Revenue Code will be renamed the United States Internal Revenue Code of 1986; the section should be changed accordingly.

3. Section 21503. No Reference as to Prior Law.

The section as written is convoluted and confusing. We suggest either that the section be deleted entirely or that it be redrafted; in either instance, Bob Mills and Ken Klug should be consulted.

4. Section 21520. Definitions.

A. As subsection(b) is written, a "marital deduction gift" does not apply to inter vivo gifts. Should it?

B. Team 4 dislikes the use of the words "intended" and "intention". (Although we do not claim that the following is an exhaustive list, the words appear in sections 21520 (b); 21522; 21523). We suggest that "intended" be replaced with "reflects a (general) purpose to qualify." For example, section 21520(b) would read: "Marital deduction gift" means a disposition of property made in an instrument that reflects a (general) purpose to qualify for the marital deduction.

5. Section 21522. Marital Deduction Gifts.

A. In this section the word "any" is used (line 2). In section 25141 the word "an" is used (line 8) although "any" is used in line 4. Although Team 4 does not have a preference, Team 4 suggests that the wording be consistent, e.g. "any" be used throughout.

B. In response to the note appearing in the middle of page 8, Team 4 believes that the regulations should be encompassed in the definition of Code for purposes of the statute.

6. Section 21524. Marital Deduction Gift in Trust.

Section 21524(e) contains two substantive errors. The first occurs on line 4; the words after "remaining" should be deleted. [Delete "trust assets, including."] The second error occurs on line 6. The words "estate of" should be inserted after the words "either to the." The clause should read "either to the estate of the income...."

7. Section 21525. Survivorship Requirement for Marital Deduction Gift.

The wording is not clear and should be revised.

8. Section 21526. Q-Tip Election.

The words "whether the instrument was executed before, on, or after the effective date of public law 97-34" should be deleted and the words "regardless of when the instrument was executed" should be substituted.

9. Section 21542. Satisfaction of a Pecuniary Gift.

This section should be moved to the general definition section.

10. Chapter 3. Miscellaneous Provisions.

A. This chapter should be renamed "Charitable Gifts."

B. Another issue for the Commission's consideration is whether or not inter vivos charitable gifts should be governed by the provisions of this chapter.

James V. Quillinan, Esq.
October 15, 1986
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If Team 4 may be of further assistance, please do not hesitate to contact us.

Thank you for your consideration.

Cordially,

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