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August 3, 2010

Executive Director
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Internal Revenue Service
Attention: Mr. Gerald Shields
Room 6129
1111 Constitution Avenue, NW
Washington, DC 20044

Re: Comments of The American College of Trust and Estate Counsel
on Form 8855, Election To Treat a Qualified Revocable Trust as
Part of an Estate

Dear Mr. Shields:

I am the President of The American College of Trust and Estate Counsel (the "College"), a professional association of approximately 2,600 lawyers from throughout the United States. Fellows of the College are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching, and bar activities.

This submission constitutes the response of the College to your request for public comments concerning Form 8855, Election To Treat a Qualified Revocable Trust as Part of an Estate.

Although we believe the Form itself works well in effecting an election under section 645 of the Internal Revenue Code, we have identified an area for improvement in the instructions for Form 8855 and for Form 1041. This suggestion has to do with whether the section 645 election is to be made by filing Form 8855 as a separate form or instead by attaching it to Form 1041.

From discussions with tax practitioners and return preparers, we understand that the common practice is *not* to file Form 8855 on its own as a separate filing but instead to attach it or a copy to the Form 1041 for the first tax year of the related estate. Leading tax return preparation software calls for Form 8855 to be attached to Form 1041 and makes no mention of filing Form 8855 separately. The practice of making the election as part of the Form 1041 filing process is a carryover from the procedures followed before promulgation of the final regulations and issuance of Form 8855 when the election was made by attaching an election statement to Form 1041.

The Form 8855 instructions on page 3 under "When To File" say to file the election by the due date of the Form 1041 and under "Where To File" say to send the

election to the identified Service Center based on the taxpayer's location. Because Form 8855 is a freestanding form with signature lines under the penalties of perjury and not any type of schedule, it appears that filing of the form separately is the suggested manner of making the 645 election, particularly because the instructions to Form 8855 do not mention the need to file it or a copy with the Form 1041.

Consistent with the Form 8855 instructions, the instructions for Form 1041 state under "Special Rule for Certain Revocable Trusts" on page 4 that Form 8855 must be filed by the due date for the Form 1041, and under "Other Forms That May Be Required" on pages 9 and 10 Form 8855 is discussed along with numerous other forms that clearly must be filed on their own (for example, Form 706).

The Form 1041 instructions under "Assembly and Attachments" call for a number of schedules and forms, including Form 8855, to be attached to Form 1041. The instructions are silent as to whether the original signed form, or only a photocopy, is to be attached.

The Form 1041 instructions are also silent as to the need to attach Form 8855 for the second and subsequent tax years, although there is an implication that attachment is not required; Item G on page 17 calls for checking Box G on Form 1041 if a section 645 election was made by filing Form 8855. However, a contrary implication arises under "General Procedures for completing Form 1041 during the election period" found on pages 4 and 5 of the Form 1041 instructions. There the executor (or, if there is no executor, the filing trustee) is required to attach a "statement" to Form 1041 each tax year with basically the same information as is provided in Form 8855. Some practitioners attach a statement, instead of a copy of Form 8855, to each 1041 return filed during the election period. Other practitioners attach a copy of Form 8855 to meet the statement requirement. We believe a copy of Form 8855 should be attached for all years during the election period, as the form provides valuable information for anyone who reviews Form 1041, and therefore the language requiring the attachment of a statement should be deleted in the two places in which it appears.

We suggest that the instructions clarify whether the 645 election is made by a separate filing of Form 8855 (with a copy to be attached to Form 1041) or whether the election may be made either by a separate filing or by attaching a signed Form 8855 to the Form 1041 for the first tax year of the related estate. In this regard, we believe it best to allow the election to be effected in either manner in order that return preparers and software firms may continue their prior practices.

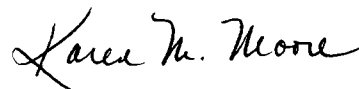
Specifically, we suggest:

- that the following be added at the end of the first paragraph of the “When to File” instruction for Form 8855 on page 3: “If a timely Form 1041 is to be filed, the election may be filed with the Form 1041,”
- that the same language be added at the end of the second paragraph of the “Special Rule for Certain Revocable Trusts” on page 4 of the instructions for Form 1041,
- that the following be added at the end of the first sentence of the “G. Section 645 Election” instructions for Form 1041 on page 17: “...and attach a copy of that form to the Form 1041,” and
- that in the Form 1041 instructions under the heading “General procedures for completing Form 1041 during the election period,” the requirement for attachment of a statement be deleted from both the third bullet paragraph under “If there is an executor” on page 4 and the sentence in the second paragraph under “If there is no executor” on page 5.

These comments were prepared by the College’s Fiduciary Income Tax Committee. Principal responsibility was exercised by W. Birch Douglass, III, of McGuireWoods LLP, Richmond, Virginia. Also participating in the preparation of these comments were Jonathan G. Blattmachr, retired partner of Milbank, Tweed, Hadley & McCloy, LLP, New York, New York; George L. Cushing of K & L Gates LLP, Boston, Massachusetts; Mary Ann Mancini of Bryan Cave LLP, Washington, D.C. as Chair of the Committee; and Christy Eve Reid of Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina.

We appreciate the opportunity to submit these written comments and would welcome the opportunity to offer any additional assistance that might be desired.

Sincerely,



Karen M. Moore