

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4-PLR-115253-98

Date:

April 15, 1999

Re:

Legend:

- Trust =
- Grantor =
- Grantor's Spouse =
- Daughter =
- Child 1 =
- Child 2 =
- Child 3 =
- Child 4 =
- Child 5 =
- Grandchild 1 =
- Grandchild 2 =
- Grandchild 3 =
- Grandchild 4 =
- State =

This is in response to your letter of February 16, 1999, and prior correspondence, in which you requested a ruling concerning the gift, estate, and generation-skipping transfer tax consequences of a proposed partial release of a power of appointment.

In 1935, Grantor and Grantor's Spouse created Trust for the benefit of Daughter. The instrument states that "[Grantor] and [Grantor's Spouse] are the parents of [Daughter] ... and it is the desire and purpose of the said [Grantor] and [Grantor's Spouse] to create an irrevocable trust, known as the [Daughter] Trust Estate, for the use and benefit of [Daughter]... ."

Article III, Section 1, provides that no beneficiary can require distribution of trust corpus or partition or termination of the trust.

Article III, Sections 2 and 3, state as follows:

Section 2: The death, insolvency or bankruptcy of the Beneficiary hereunder, or the transfer of her interest in any manner, or by descent or otherwise, during the continuance of this Trust, shall not operate as a dissolution of nor terminate the Trust, nor shall it have any effect whatever upon said Trust Estate, its operation or mode of business, nor shall it entitle her heirs or assigns or representatives to take any action in the courts of law or equity against the Estate, its Trustees or property or its business operations of any kind, all of which shall remain intact and undisturbed thereby; but they shall succeed only to the rights of the original Beneficiary as herein set forth.

Section 3: At the time of the death of Beneficiary [Daughter], her equitable interest in said [Trust], unless disposed of otherwise by said Beneficiary, shall pass to and vest in her heirs in accordance with the laws of descent and distribution then in force, applicable to the equitable interest of such Beneficiary in said [Trust]. (The term 'Beneficiary' applies not only to [Daughter] but to all her successors to beneficial interests under this trust).

Article IV, Section 3, provides that the trust will continue during Daughter's life and for a period of 21 years after her death. On termination, the trustee is to distribute the trust corpus among the then existing beneficiaries.

Article IV, Section 4, provides that the beneficiary may receive from time to time, a portion of the net profits accruing from time to time to the Trust, as the Trustee, acting with the advice and consent of the Advisory Board, may see fit to pay over and deliver

to the beneficiary. No duty is imposed upon the Trustee to distribute net profits, but the power is conferred upon him, acting with advice and consent of the Advisory Board, to do so, and in exercising this discretion, the Trustee and Advisory Board must give full consideration to the interest of both the beneficiary and the Trust Estate.

In PLR 9445014 (TR-31-977-94) the Internal Revenue Service ruled, with respect to Trust that, under Article III, Section 3, Daughter possessed a general power of appointment created on or before October 21, 1942.

Daughter, by a document executed in late-1997, reduced her general power of appointment. The document that Daughter executed reduced her power of appointment such that Daughter could exercise the power only in favor of her estate and could only exercise the power only at her death.

Although Daughter retains a general power of appointment over Trust, she does not expect to exercise it. Hence, in all likelihood Daughter's heirs at law will succeed her as beneficiaries of Trust. Daughter is unmarried, and under State law, the heirs of Daughter will be her children who are living at her death and the descendants of any child who fails to survive Daughter. All of Daughter's children, Child 1, Child 2, Child 3, Child 4, and Child 5 are still living. Child 1 has executed a qualified disclaimer of a portion of his interest in Trust and this will cause the disclaimed beneficial interest to pass to his children, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4. At present, the successor beneficiaries include Child 1, Child 2, Child 3, Child 4, and Child 5 and the four children of Child 1, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 (hereinafter "Successor Beneficiaries"). As successor beneficiaries, Daughter's heirs at law will have the same general power of appointment that Daughter had before she executed her partial release.

Each of the Successor Beneficiaries proposes to "partially release" their respective general power of appointment over Trust to which they may succeed upon the death of Daughter. The release will restrict the respective beneficiary's power to appoint the property in the trust in two respects. First, the beneficiary's power to appoint the beneficial interest in the trust will be exercisable in favor of the beneficiary's estate. Second, the power to appoint the beneficial interest may not be exercised in a manner that would take effect during the beneficiary's lifetime.

The trustee has represented that there have been no additions to Trust after September 25, 1985.

The Successor Beneficiaries have requested that the Internal Revenue Service rule as follows:

1) The proposed partial release of the beneficiary's general power of appointment will not constitute an exercise of that general power of appointment under § 2041 and § 2514 of the Internal Revenue Code.

2) The proposed partial release of the beneficiary's general power of appointment will not constitute the creation of a new power of appointment for purposes of § 2041 and § 2514.

3) The proposed partial release of the beneficiary's general power of appointment will not constitute an addition to Trust that will subject any part of the Trust or any transfer of property from Trust to the generation-skipping transfer tax.

4) The proposed partial release of the beneficiary's general power of appointment will not be an exercise, release, or lapse of the power and will not cause the 9-month period provided in § 2518(b)(2) to commence.

Law and Analysis:

Issues 1 and 2

Section 2041(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent--

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

Section 2041(b)(1) defines the term "general power of appointment" as a power exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or creditors of the decedent's estate.

Section 20.2041-1(b) of the Estate Tax Regulations states that a power of appointment includes all powers that are in substance and effect powers of appointment, regardless of the nomenclature used in creating the power.

Section 20.2041-2(d) provides that a failure to exercise a general power of appointment created before October 22, 1942, or a complete release of the power is not an exercise of the power. The phrase "a complete release" means a release of all

powers over all or part of the property subject to the power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the decedent completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half.

Section 2514(a) provides that an exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power, but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

Section 25.2514-2(c) of the Gift Tax Regulations provides that a failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase "a complete release" means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the possessor completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half.

In this case, each of the Successor Beneficiaries proposes to "partially release" their respective general power of appointment over Trust to which they may succeed upon the death of Daughter. The release will restrict the respective Successor Beneficiary's power of appointment in two respects. First, the power to appoint the beneficial interest in the trust may only be exercised in favor of the Successor Beneficiary's estate. Second, the power to appoint the beneficial interest may not be exercised in a manner that would take effect during the Successor Beneficiary's lifetime. Sections 20.2041-2(d) and 25.2514-2(c) indicate that the release of a general power of appointment is to be distinguished from the reduction of a power of appointment to a lesser power. After the partial release, if the Successor Beneficiary succeeds to Daughter's interest in Trust, each Successor Beneficiary will continue to possess a general power of appointment over their respective share of Trust. The Successor Beneficiary, however, will be able to appoint the beneficial interest only to the Successor Beneficiary's estate and such appointment will take effect only at the Successor Beneficiary's death.

Therefore, based on the facts submitted and the representations made, we conclude that each Successor Beneficiary's partial release of their general power of appointment in the manner proposed will not constitute an exercise of that general power of appointment under §§ 2041 and 2514 and will not constitute the creation of a new power of appointment for purposes of §§ 2041 and 2514.

Section 2601 imposes a tax on each generation-skipping transfer. Section 2611(a) defines a generation-skipping transfer to mean (1) a taxable distribution, (2) a taxable termination, or (3) a direct skip.

Section 1433(a) of the Tax Reform Act of 1986 (TRA of 1986) provides that, except as provided in § 1433(b), the generation-skipping transfer tax applies to generation-skipping transfers made after October 22, 1986.

Section 1433(b)(2)(A) of the TRA of 1986 provides that the generation-skipping transfer tax does not apply to transfers under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that a trust qualifies for transitional rule relief from the provisions of Chapter 13 of the Code, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii)(A), any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C) (relating to property includible in a grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(iv) provides that an addition made after September 25, 1985, to an irrevocable trust will subject to the provisions of Chapter 13 a proportionate amount of distributions from, and terminations of interests in, property held in the trust.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided in § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise or lapse is treated to any extent as a taxable transfer under Chapter 11 or Chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed will be treated as an addition to the trust. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under Chapter 11 or Chapter 12. In the latter case, the transferor for purposes of Chapter 11 or Chapter 12 is the transferor for purposes of Chapter 13.

Generally, if any portion of a trust remains in the trust after the taxable exercise, release, or lapse of a general power of appointment over that portion of the trust, the value of the entire portion of the trust subject to the power that was exercised, released, or lapsed will be treated as an addition to the trust. However, the portion of a trust that remains after a nontaxable release or lapse of a general power of appointment is not treated as a constructive addition. See § 26.2601-1(b)(1)(v).

In this case, each Successor Beneficiary will limit his or her general power of appointment such that their beneficial interest in the trust may only be appointed to their respective estate and the power to appoint the beneficial interest may not be exercised in a manner that would take effect during the Successor Beneficiary's lifetime. Each Successor Beneficiary, however, will continue to hold a general power of appointment after their power to appoint the property of Trust is reduced. As noted above, this partial release will not constitute an exercise of the general power of appointment under §§ 2041 and 2514.

Therefore, based on the facts submitted and the representations made, we conclude that the partial release in the manner proposed will not constitute an addition to Trust that will subject any part of the Trust or any transfer of property from Trust to the generation-skipping transfer tax.

Issue 4

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate and gift tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if--

- (1) the refusal is in writing,
- (2) the writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date that is 9 months after the later of--
 - (A) the date on which the transfer creating the interest in the person is made, or (B) the day on which the person attains age 21,
- (3) the person has not accepted the interest or any of its benefits, and
- (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either--
 - (A) to the spouse of the decedent, or
 - (B) to a person other than the person making the disclaimer.

Section 25.2518-2(c)(3) provides that, for purposes of the time limitation, the 9-month period for making a disclaimer generally is to be determined with reference to the transfer creating the interest in the disclaimant. In the case of a general power of

appointment, the holder of the power has a 9-month period after the creation of the power in which to disclaim. A person to whom any interest in property passes by reason of the exercise, release or lapse of a general power may disclaim such interest within a 9-month period after the exercise, release or lapse regardless of whether the exercise, release or lapse is subject to the estate or gift tax.

Under § 25.2518-2(c)(3), if an individual receives an interest in property by reason of the exercise, release or lapse of another person's general power of appointment, in order to make a qualified disclaimer, the individual must disclaim the interest within a 9-month period after the exercise, release or lapse of the power. In this case, the Successor Beneficiary's proposed partial release of the power of appointment will not constitute the exercise of the power. The Successor Beneficiary's power will merely be reduced such that it may be exercised only in favor of the Successor Beneficiary's estate and may only be exercised at the Successor Beneficiary's death; however, the power will continue to be a general power of appointment. No interest will pass to any other person by reason of the partial release of the power of appointment.

We conclude that the 9-month period provided in § 2518(b), during which a person to whom any interest passes by reason of the exercise, release, or lapse of a Successor Beneficiary's general power of appointment must execute the disclaimer, will not commence as a result of the partial release of the general power of appointment in the manner proposed.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure (1)
Copy for § 6110 purposes