

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-105295-00

Date:

Re:

February 13, 2001

LEGEND:

Settlor =
Spouse =
Trust Agreement =

Trust =
Child =
A =

Dear :

This is in response to your correspondence dated January 30, 2001, and prior letters requesting a ruling on whether the trustee's and Trust Protector's power under Article II, Section 5, of the Trust Agreement will cause the Trust property to be includible in Settlor's gross estate.

Settlor will execute the Trust Agreement creating the Trust and will transfer property to the Trust. Spouse will be designated as the trustee, and A, an individual, will be designated as Trust Protector.

Under Article II, Section 3, Settlor shall, during Settlor's lifetime, have the power at any time, acting in a nonfiduciary capacity and without the approval or consent of any person, to acquire the assets of the Trust by substituting property of an equivalent value. The trustee has a fiduciary duty to verify the value of the substitute property within 60 days of the tender of the property. Any disputes regarding reduction shall be submitted to arbitration.

Article II, Section 5, provides:

The Trustee who is not related or subordinate as defined in Section 672 of the Internal Revenue Code of 1986, as amended, or if there is no such Trustee then serving, the Trust Protector who is not related or subordinate . . . , may, in the Trustee's or Trust Protector's sole and

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absolute discretion, make distributions to the Internal Revenue Service (or similar state agency) in order to satisfy any federal or state income tax liability incurred by Settlor pursuant to the laws of the United States of America or any state in the United States of America which is attributable to income of any trust under this Agreement.

Under Article IV , Section 1 of the Trust Agreement, during Spouse's lifetime, the income and principal of the Trust will be distributed to or for the benefit of Spouse and the issue of Settlor in such proportions and amounts as is necessary for their health, support, maintenance, and education. The needs of Spouse are to be satisfied before any distribution may be made to any other beneficiary. The trustee is to take into consideration the other resources the beneficiaries may have available to satisfy those needs.

Under Article V, Section 1, at Spouse's death, the principal of the trust will be subject to a power of appointment exercisable by Spouse in favor of any persons who are the issue of Settlor; any person who is a spouse of an issue of Settlor; any one or more organizations which qualify as charitable under either section 170 or section 2055; and/or any trust created primarily for the benefit of one or more persons or entities who are objects of the power. Under Article V, section 2, and Article VI , any unappointed Trust property will be held in trust for the benefit of Child and Child's issue.

In the event that two or more trusts under this Agreement are Grantor Trusts, as described in section 671 . . . , amounts distributed under this Section 5 shall be made from the separate trusts in proportion to the income of each such trust, which is taxable to the Settlor.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest thereof which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death –

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

In the present case, the trustee of the Trust, if not related or subordinate to the Settlor under section 672, or the Trust Protector, if not related or subordinate to the

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Settlor under section 672, may, in their sole discretion, distribute to the Internal Revenue Service or a similar state agency income or principal to satisfy Settlor's income tax liability attributable to the Trust. The amount of the distribution is equal to the excess of Taxpayer's personal income tax liability over his personal income tax liability computed as if the Trust is not a grantor trust under sections 671, et. seq. The trustee's/Trust Protector's discretionary power as described above will not constitute retention by Settlor of the right to the income or enjoyment of the property under section 2036(a), and the Trust property will not accordingly be includible in Settlor's gross estate by reason of the trustee's or Trust Protector's authority.

Accordingly, we conclude that the Trustee's and Trust Protector's discretionary power under Article II, Section 5, of the Trust Agreement to satisfy Settlor's income tax liability attributable to the income of the Trust will not cause the Trust property to be includible in Settlor's gross estate.

Except as we have specifically ruled herein, we express no opinion under the cited provisions or under any other provision of the Code.

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

Sincerely yours,
GEORGE MASNIK
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
copy for 6110 purposes