Internal Revenue Service

Number: **200551020**
Release Date: 12/23/2005
Index Number: 2601.03-01

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-123194-05
Date:
September 21, 2005

Legend

Grantor =
Trust 1 =

Date 1 =
Child 1 =
Trust 2 =

Child 2 =
Trust 3 =

Child 3 =
Trust 4 =

Child 4 =
Trust 5 =

Child 5 =
Trust 6 =

Child 6 =
Trust 7 =

Child 7 =

Trust 8 =

Child 8 =
Trust 9 =

Child 9 =
Trust 10 =

Date 2 =
Child 10 =
Trustee 1 =
Trustee 2 =
Bank 1 =

Date 3 =
Court =

State =
Date 4 =
Bank 2 =
Trust Company =
Trustee 3 =

Dear :

This letter responds to your letter, dated April 20, 2005, requesting rulings relating to the estate, gift, and generation-skipping transfer tax consequences of modifying ten trusts.

Grantor created irrevocable trusts for the benefit of each of his children. Trust 1 was created on Date 1, for the benefit of Child 1. Trust 2 was created on Date 1, for the benefit of Child 2. Trust 3 was created on Date 1, for the benefit of Child 3. Trust 4 was created on Date 1, for the benefit of Child 4. Trust 5 was created on Date 1, for the benefit of Child 5. Trust 6 was created on Date 1, for the benefit of Child 6. Trust 7 was created on Date 1, for the benefit of Child 7. Trust 8 was created on Date 1, for the benefit of Child 8. Trust 9 was created on Date 1, for the benefit of Child 9. Trust 10 was created on Date 2, for the benefit of Child 10. Date 1 and Date 2 are before September 25, 1985. Trustee 1, an independent trustee, and Trustee 2, a family member, are individuals and currently serve as trustees of each trust. Each trust has the same operative provisions.

Article First, paragraph (1) of each trust provides that during the lifetime of the primary beneficiary for whom the trust is held, the trustees may distribute income to or for the benefit of the primary beneficiary and the primary beneficiary's issue. Income not distributed shall be added to principal.

Article First, paragraph (2) of each trust provides that the trustees may distribute principal to or for the benefit of the primary beneficiary for any reason. In addition, the trustees may distribute principal to or for the benefit of the primary beneficiary's issue as the trustees deem necessary or advisable for the health, education, support, maintenance and general welfare of the individual.

Article First, paragraph (4) of each trust provides that if the trust estate has not been completely terminated by principal distributions during the lifetime of the primary beneficiary, then upon the death of the primary beneficiary, all undistributed net income shall be added to principal and the entire then remaining principal of the trust shall be distributed to or for the benefit of any person(s) in such proportions, upon such lawful estates and interests, outright or in trust, and on such terms and conditions and with such powers in such persons as the primary beneficiary shall by last will prescribe. The power may not be exercised to any extent, directly or indirectly, in favor of the primary beneficiary, the primary beneficiary's estate, the primary beneficiary's creditors, or the creditors of the primary beneficiary's estate.

Article First, paragraph (5) of each trust provides that to the extent the primary beneficiary's power of appointment is not fully exercised, the unappointed principal of the trust estate remaining at the death of the primary beneficiary shall be distributed to the primary beneficiary's then living issue, per stirpes. If there are none, the principal shall be distributed to Grantor's then living issue, per stirpes. Any share distributable to one of Grantor's children who is the primary beneficiary of one of the other irrevocable trusts shall be distributed to that child's trust instead of outright to the child.

Article Third of each trust provides that there shall always be two trustees unless a corporate trustee is serving as sole trustee. Grantor has the power to appoint successor trustees. If no such appointment is made within ninety days after a vacancy occurs or if no person then possesses the power to make an appointment, if the co-trustee then serving is a corporate trustee, such corporate trustee shall serve as sole trustee. If the co-trustee then serving is not a corporate trustee, then Bank 1 shall serve as successor trustee and as sole trustee if no successor trustee is appointed. Neither Grantor nor any of Grantor's issue of any degree shall under any circumstances serve as successor trustee of a trust. If, when any co-trustee ceases to serve as such the other co-trustee is a "related or subordinate party" within the meaning of § 672(c) of the Internal Revenue Code, then the successor co-trustee must be a person who is not a "related and subordinate party." Notwithstanding the provisions of Article First, the powers of the trustees to distribute income and principal shall not be exercised during any period after a vacancy occurs and before it is filled unless the co-trustee then serving is not a "related and subordinate party."

Article Fourth of each trust provides that the trust is irrevocable.

On Date 3, the trustees of each trust petitioned Court to modify Article Third of each trust agreement under State law. Court approved the modifications on Date 4, effective upon the receipt of a favorable private letter ruling from the Internal Revenue Service. As modified, Article Third of each trust will provide that there shall always be at least one independent trustee, and there shall always be at least two trustees unless a corporate trustee that is an independent trustee is serving as sole trustee. For purposes of Article Third, the term independent trustee shall mean any person, individual or corporate, serving as trustee that is not a descendant of Grantor of any degree or a "related and subordinate party" within the meaning of § 672(c) of the Internal Revenue Code to Grantor or any descendant of Grantor in any degree. Bank 2, Trust Company, and any successor corporation to either of them may only serve as an independent trustee of a trust if the Grantor, any of his descendants, and any trusts created by or for the benefit of the Grantor or any of his descendants own less than five percent of the outstanding stock of the corporation, or any parent or successor corporation to any of them. Any power under Article First to make discretionary distributions of income and/or principal shall be exclusively vested in the individual or corporate independent trustee.

Article Third of each trust, as modified, will further provide Trust Company will succeed Trustee 2 as the non-independent trustee. Trustee 3 will succeed Trustee 1 as the independent trustee. Any group of Grantor's then living and legally competent children consisting of sixty percent or more of such children acting together, or Grantor's only then living and legally competent child acting alone, if there is only one such child, shall comprise the "Child Majority Group" for each trust. The Child Majority Group shall have the power to appoint any person(s), individual or corporate, to serve as a successor trustee, independent or non-independent. Grantor may never serve as a successor trustee of any of the trusts. The Child Majority Group shall also have the power to remove existing trustees. The Child Majority Group shall also have the power to direct the trustees with respect to all matters relating to any "Family Stock" held or acquired by any of the trusts, including the exercise of voting rights, the creation and execution of buy-sell agreements or voting trust agreements, the sale of the stock, the retention of the stock, or the acquisition of the stock and the exercise of any and all other rights relating to the stock. Family Stock is defined as stock of any bank, trust company, bank holding company or other company if more than five percent of the outstanding stock of the bank, trust company, bank holding company or other company is owned by Grantor, any of his descendants and/or trusts created by or for the benefit of Grantor or any of his descendants.

Potential beneficiaries of each trust include individuals who are two or more generations below the grantors' generation, therefore, distributions from each trust may be subject to the generation-skipping transfer tax. Trust 1, Trust 2, Trust 3, Trust 4,

Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Trust 10 were irrevocable on September 25, 1985.

You have requested the following rulings: (1) the proposed modifications will not cause Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, or Trust 10 to lose its status as exempt from the generation-skipping transfer tax; (2) the proposed modifications will not result in any of Grantor's children having a general power of appointment under §§ 2041 or 2514 over the assets of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, or Trust 10.

Ruling 1

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term "generation-skipping transfer" to include a taxable distribution, taxable termination, and a direct skip.

Each of the trusts discussed in this letter is a generation-skipping transfer trust because the trusts provide for distributions to one or more generations of beneficiaries below the grantor's generation. Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Trust 10 were irrevocable on September 25, 1985. The trustees represent that there have been no additions, actual or constructive, to these trusts after September 25, 1985.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) 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 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), that relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Trust 10 are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided for otherwise, the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. Unless

specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

The proposed modifications to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Trust 10 do not shift a beneficial interest in any trust to a beneficiary who occupies a lower generation than the person(s) who held the beneficial interest prior to the modifications. In addition, the modifications do not extend the time for vesting of any beneficial interest in trust beyond the period provided in the existing trusts. Accordingly, based on the facts submitted and the representations made, future distributions from or terminations of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Trust 10 will not be subject to the generation-skipping transfer tax.

Ruling 2

Section 2041(a)(2) 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 the decedent has, at the time of his death, a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors,

or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides, in part, that a donee may have a power of appointment if he has the power remove or discharge a trustee and appoint himself. For example, if under the terms of the instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of the fiduciary duties is not a power of appointment.

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

Section 2514(c) provides that a general power of appointment is a power that is exercisable in favor of the individual possessing the power (the possessor), his estate, his creditors, or the creditors of his estate. However, a power to consume, invade, or appropriate property for the benefit of the possessor that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

Section 25.2514-1(b)(1) of the Gift Tax Regulations provides, in part, that a donee may have a power of appointment if he has the power to remove or discharge a trustee and appoint himself. For example, if under the terms of the instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of the fiduciary duties is not a power of appointment.

Rev. Rul. 95-58, 1995-2 C.B. 191, holds that a decedent/grantor's reservation of an unqualified power to remove a trustee and to appoint an individual or corporate successor trustee that is not related or subordinate to the decedent within the meaning

of § 672(c), is not considered a reservation of the trustee's discretionary powers of distribution over the property transferred by the decedent/grantor to the trust. Accordingly, the trust corpus is not included in the decedent's gross estate under §§ 2036 or 2038. The ruling notes that the Eighth Circuit in Estate of Vak v. Commissioner, 973 F.2d 1409 (8th Cir. 1992), concluded that the decedent had not retained dominion and control over assets transferred to a trust by reason of his power to remove and replace the trustee with a party that was not related or subordinate to the decedent. Accordingly, the court held that under § 25.2511-2(c), the decedent made a completed gift when he created the trust and transferred assets to it.

Section 672(c) defines the term "related or subordinate party" to mean any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any one of the following: the grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

In this case, under the proposed modifications, the individual or corporate independent trustee has the sole discretionary authority to make distributions of income and/or principal from each trust. In addition, Grantor's children will have an unqualified power, either alone or in conjuction with the other beneficiaries, to remove a trustee, including the independent trustee, and to appoint a successor trustee. The proposed modifications, however, restrict any appointment of a successor independent trustee to an individual or corporation that is not related or subordinate to the Grantor or any of his descendants in any degree within the meaning of § 672(c). The removal and appointment powers given to Grantor's children are not the equivalent of the power referred to in the examples in §§ 20.2041-1(b)(1) and 25.2514-1(b)(1) where an individual may remove a trustee and appoint himself. Instead, the proposed power given to Grantor's children is the equivalent of the power referenced in Rev. Rul. 95-58 where a replacement trustee may not be a related or subordinate party within the meaning of § 672(c). Accordingly, based on the facts submitted and the representations made, the proposed modifications will not cause any beneficiary of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Trust 10 to have a general power of appointment under §§ 2041 or 2514.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion on whether Bank 2 or Trust Company are related or subordinate parties as described in § 672(c). Furthermore, we express no opinion as to whether Bank 2 or Trust Company may ever serve as an independent trustee of any of the trusts regardless of the ownership of the stock.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your attorney.

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

Sincerely,

James F. Hogan

James F. Hogan
Senior Technician Reviewer, Branch 9
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 Purposes