Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:02
PLR-140958-13

Date:
February 07, 2014

Grantor =

Individual 1 =

Individual 2 =

Individual 3 =

Individual 4 =

Trust =
State =
Trustee =
Foundation =

Dear :

This responds to a letter dated September 3, 2013, and subsequent correspondence, requesting rulings under §§ 671, 2501, and 2514 of the Internal Revenue Code.

The information and representations submitted state that Grantor proposes to create an irrevocable trust (Trust) for the benefit of himself; his issue; his children's issue; and Individual 1, Individual 2, Individual 3, and Individual 4. Trustee is a trust company located in State. During Grantor's lifetime, the Trust beneficiaries are Grantor and four adult individuals (Beneficiaries).

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Article 2.1 of Trust provides that Trustee must make distributions of income and principal as directed by Distribution Committee and/or Grantor, as follows:

> (1) At any time Trustee pursuant to the direction of a majority of Distribution Committee members, with the written consent of Grantor, shall distribute to or for the benefit of such one or more members of the Beneficiaries such amounts of the net income or principal as directed by the Distribution Committee until the death of Grantor (Grantor's Consent Power);
>
> (2) At any time, Trustee, pursuant to the direction of all Distribution Committee members, shall distribute to any one or more of the Beneficiaries, such amounts of the net income or principal as directed by the Distribution Committee (Unanimous Member Power); and
>
> (3) At any time, Grantor, in a nonfiduciary capacity, may, but shall not be required to, distribute to any one or more of the Beneficiaries (other than Grantor, Grantor's estate, Grantor's creditors and the creditors of Grantor's estate) such amounts of the principal (including the whole thereof) as Grantor deems advisable to provide for the health, education, maintenance, or support of Grantor's issue (Grantor's Sole Power).

Further, Trustee shall add all undistributed net income to principal at least annually.

Article 2.2 of Trust provides that upon Grantor's death, the principal and all income of Trust shall be distributed as Grantor may appoint by will, to or for the benefit of anyone, other than Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. In default of the exercise of this limited power to appoint (Grantor's Testamentary Power) the balance of Trust will be divided into two equal parts. One-half of the Trust estate will be distributed in equal shares to the four named beneficiaries who survive him. The other half will be divided into a sufficient number of equal shares so that there shall be set aside one share for each child of Grantor who survives Grantor and one such share for the collective descendants who are then living of any child of Grantor who does not survive Grantor to be held in separate trusts. If none of Grantor's children or descendants survive Grantor then the remaining balance of Trust is to be distributed to Foundation.

Article 12.4 of Trust provides that at all times the Distribution Committee must consist of at least two members who are beneficiaries of Trust. If at any time the Distribution Committee does not consist of at least two members who are beneficiaries of Trust other than Grantor, a vacancy on the Distribution Committee must be filled by the eldest then living adult and competent descendant of Grantor who is willing and able to act and who is not a member of the Distribution Committee or, if there is no such descendant, the Distribution Committee shall cease to exist. The Distribution

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Committee shall in all events cease to exist on the death of Grantor. The Distribution Committee will be initially composed of Individual 1, Individual 2, Individual 3, and Individual 4.

You requested the following rulings:

1. So long as the Distribution Committee is serving, no portion of the items of income, deductions, and credits against tax of the Trust shall be included in computing under § 671 the taxable income of Grantor or any member of the Distribution Committee.

2. The contribution of property to Trust by Grantor will not be a completed gift subject to federal gift tax.

3. Any distribution of property by direction of either the Distribution Committee, by unanimous agreement, or Grantor and a majority of the Distribution Committee members, from Trust to Grantor will not be a completed gift, subject to federal gift tax, by any member of the Distribution Committee.

4. Any distribution of property by Distribution Committee, by either unanimous agreement, or Grantor and a majority of the Distribution Committee members from Trust to any beneficiary of Trust, other than Grantor, will not be a completed gift subject to federal gift tax, by any member of the Distribution Committee, other than Grantor.

RULING 1

Section 671 provides that where it is specified in subpart E of part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 672(a) provides, for purposes of subpart E, the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust.

Sections 673 through 677 specify the circumstances under which the grantor is treated as the owner of a portion of a trust.

Section 673(a) provides that the grantor shall be treated as the owner of any portion of a trust in which the grantor has a reversionary interest in either the corpus or

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the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds five (5) percent of the value of such portion.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b)(3) provides that § 674(a) shall not apply to a power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if, under the terms of the trust agreement or circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiary of the trust.

Section 676(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of part I, subchapter J, chapter 1, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Section 677(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Section 678(a)(1) provides a general rule that a person other than a grantor shall be treated as the owner of any portion of a trust with respect to which such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself.

Based solely on the facts and representations submitted, we conclude an examination of Trust reveals none of the circumstances that would cause Grantor or any other person to be treated as the owner of any portion of Trust under §§ 673, 674, 676, 677, or 678.

We further conclude that an examination of Trust reveals none of the circumstances that would cause administrative controls to be considered exercisable

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primarily for the benefit of Grantor or any other person under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor or any other person will be treated as the owner of any portion of Trust under § 675. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.

RULINGS 2 AND 3

Section 2501(a)(1) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident. Section 2511(a) provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-2(b) of the Gift Tax Regulations provides that a gift is complete as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in the donor no power to change its disposition, whether for the donor's own benefit or for the benefit of another. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

Section 25.2511-2(b) also provides an example where the donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among the donor's descendants. The regulation concludes that no portion of the transfer is a completed gift. However, if the donor had not retained a testamentary power of appointment, but instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift.

Section 25.2511-2(c) provides that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title in himself or herself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 25.2511-2(e) provides that a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom.

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Section 25.2511-2(f) provides that the relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by death of the donor, is regarded as the event which completes the gift and causes the gift tax to apply.

Section 25.2511-2(g) provides that if a donor transfers property to himself as trustee (or to himself and some other person, not possessing a substantial adverse interest, as trustees), and retains no beneficial interest in the trust property and no power over it except fiduciary powers, the exercise or nonexercise of which is limited by a fixed or ascertainable standard, to change the beneficiaries of the transferred property, the donor has made a completed gift and the entire value of the transferred property is subject to the gift tax.

Section 25.2511-2(e) does not define "substantial adverse interest." Section 25.2514-3(b)(2) provides, in part, that a taker in default of appointment under a power has an interest that is adverse to an exercise of the power. Section 25.2514-3(b)(2) also provides that a co-holder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate.

In Estate of Sanford v. Commissioner, 308 U.S. 39 (1939), the taxpayer created a trust for the benefit of named beneficiaries and reserved the power to revoke the trust in whole or in part, and to designate new beneficiaries other than himself. Six years later, in 1919, the taxpayer relinquished the power to revoke the trust, but retained the right to change the beneficiaries. In 1924, the taxpayer relinquished the right to change the beneficiaries. The Court stated that the taxpayer's gift is not complete, for purposes of the gift tax, when the donor has reserved the power to determine those others who would ultimately receive the property. Accordingly, the Court held that the taxpayer's gift was complete in 1924, when he relinquished his right to change the beneficiaries of the trust. A grantor's retention of a power to change the beneficial interests in a trust causes the transfer to the trust to be incomplete for gift tax purposes, even though the power may be defeated by the actions of third parties. Goldstein v. Commisisoner, 37 T.C. 897 (1962). See also, Estate of Goelet v. Commissioner, 51 T.C. 352 (1968).

In this case, Grantor retained the Grantor's Consent Power over the income and principal of Trust. Under § 25.2511-2(e), a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. The Distribution Committee members are not takers in default for purposes of § 25.2514-3(b)(2). They are merely co-holders of the power. The Distribution Committee ceases to exist upon the death of Grantor. Under § 25.2514-3(b)(2), a co-holder of a power is only considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. In this case, the

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Distribution Committee ceases to exist upon Grantor's death. Accordingly, the Distribution Committee members do not have interests adverse to Grantor under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). Therefore, Grantor is considered as possessing the power to distribute income and principal to any beneficiary himself because he retained the Grantor's Consent Power. The retention of this power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Grantor also retained the Grantor's Sole Power over the principal of Trust. Under § 25.2511-2(c), a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries. In this case, Grantor's Sole Power gives Grantor the power to change the interests of the beneficiaries. Accordingly, the retention of the Grantor's Sole Power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Further, Grantor retained Grantor's Testamentary Power to appoint the property in Trust to anyone, including trusts, other than Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. Under § 25.2511-2(b) the retention of a testamentary power to appoint the remainder of a trust is considered a retention of dominion and control over the remainder. Accordingly, the retention of this power causes the transfer of property to Trust to be incomplete with respect to the remainder in Trust for federal gift tax purposes.

Finally, the Distribution Committee possesses the Unanimous Member Power over income and principal. This power is not a condition precedent to Grantor's powers. Grantor's powers over the income and principal are presently exercisable and not subject to a condition precedent. Grantor retains dominion and control over the income and principal of Trust until the Distribution Committee members exercise their Unanimous Member Power. Accordingly, this power does not cause the transfer of property to be complete for federal gift tax purposes See Goldstein v. Commissioner, 37 T.C. 897 (1962); Estate of Goelet v. Commissioner, 51 T.C. 352 (1968).

Accordingly, based on the facts submitted and the representations made, we conclude that the contribution of property to Trust by Grantor is not a completed gift subject to federal gift tax. Any distribution from Trust to Grantor is merely a return of Grantor's property. Therefore, we conclude that any distribution of property by the Distribution Committee from Trust to Grantor will not be a completed gift subject to federal gift tax, by any member of the Distribution Committee. Further, upon Grantor's death, the fair market value of the property in Trust is includible in Grantor's gross estate for federal estate tax purposes.

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RULING 4

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 the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (possessor), the possessor's estate, the possessor's creditors, or the creditors of the individual's estate.

Section 25.2514-1(c)(1) provides, in part, that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the possessor or his creditors, or the possessor's estate or the creditors of the estate.

Section 2514(c)(3)(A) provides, that in the case of a power of appointment created after October 21, 1942, if the power is exercisable by the possessor only in conjunction with the creator of the power, such power is not deemed a general power of appointment.

Section 2514(c)(3)(B) provides, that in the case of a power of appointment created after October 21, 1942, if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest in the property subject to the power, which is adverse to the exercise of the power in favor of the possessor, such power shall not be deemed a general power of appointment. For purposes of § 2514(c)(3)(b), a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power.

Section 25.2514-3(b)(2) provides, in part, that a coholder of a power has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a coholder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y.

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The powers held by the Distribution Committee members under the Grantor's Consent Power are powers that are exercisable only in conjunction with the creator, Grantor. Accordingly, under § 2514(c)(3)(A), the Distribution Committee members do not possess general powers of appointment by virtue of possessing this power. Further, the powers held by the Distribution Committee members under the Unanimous Member Powers are not general powers of appointment. As in the example in § 25.2514-3(b)(2), the Distribution Committee members have substantial adverse interests in the property subject to this power. Accordingly, any distribution made from Trust to a beneficiary, other than Grantor, pursuant to the exercise of these powers, the Grantor's Consent Power and the Unanimous Member Powers, are not gifts by the Distribution Committee members. Instead, such distributions are gifts by Grantor.

Based upon the facts submitted and representations made, we conclude that any distribution of property by the Distribution Committee from Trust to any beneficiary of Trust, other than Grantor, will not be a completed gift subject to Federal gift tax, by any member of the Distribution Committee. Further, we conclude that any distribution of property from Trust to a beneficiary, other than Grantor, will be a completed gift by Grantor.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions 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. In accordance with the power of attorney on file with this office, copies of this letter are being sent to the taxpayer's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc:

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