Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201848002**
Release Date: 11/30/2018

Index Number: 671.00-00, 2501.00-00, 2514.00-00

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-105061-18

Date:
August 20, 2018

RE:

Legend

Date	=
Grantor	=
Trust	=
Child 1	=
Child 2	=
Child 3	=
Child 4	=
Trustee	=
State	=
Distribution Committee	=

Dear :

This letter responds to your authorized representative's letter dated February 1, 2018, requesting rulings under §§ 671, 2501, and 2514 of the Internal Revenue Code.

FACTS

The facts submitted and representations made are as follows. On Date, Grantor created Trust. Grantor will be the only person who transfers assets to Trust, and all property contributed to Trust will be Grantor's separate property under the law of the

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state in which Grantor resides. The beneficiaries of Trust are Grantor, Child 1, Child 2, Child 3, and Child 4. Trustee, a private fiduciary, is the sole trustee of Trust. The situs of Trust is State.

The terms of Trust are as follows. During Grantor's lifetime, Trustee must distribute such amounts of income and/or principal to Grantor, Child 1, Child 2, Child 3, and Child 4, as directed by the Distribution Committee and/or Grantor, as follows:

(1) At any time, Trustee, pursuant to the direction of a majority of the Distribution Committee members, with the written consent of Grantor, shall distribute to any beneficiaries such amounts of the Trust's corpus or income as directed by the Distribution Committee (Grantor's Consent Power);

(2) At any time, Trustee, pursuant to the direction of all of the Distribution Committee members, other than Grantor, shall distribute to any beneficiary 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, direct Trustee to distribute to any one or more beneficiary, other than Grantor, such amounts of the principal (including the whole thereof) as Grantor deems advisable to provide for the health, maintenance, support and education of said beneficiaries (Grantor's Sole Power).

The Distribution Committee may direct that distributions be made equally or unequally and to or for the benefit of any one or more of the beneficiaries of Trust to the exclusion of others. Any net income not distributed by Trustee will be accumulated and added to principal.

The Trustee, pursuant to the direction of (1) a majority of the Distribution Committee members, with the written consent of the Grantor, or (2) pursuant to the direction of all of the Distribution Committee members, other than the Grantor, shall at any time or times prior to or upon the distribution date, distribute to the trustee or trustees of any one or more qualified trusts such amounts of the net income and/or principal of Trust (including the whole thereof) as the Distribution Committee determines. Any such distribution shall be added to the principal of such qualified trust and disposed of in accordance with the terms of such qualified trust. No distribution or transfer may be made to a qualified trust unless made pursuant to the direction of the Distribution Committee.

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The Distribution Committee is initially composed of Grantor, Child 1, and Child 2. At all times at least two "Eligible Individuals" must be members of the Distribution Committee. "Eligible Individuals" include all beneficiaries (other than Grantor) who are at least 18 years of age. A vacancy on the Distribution Committee must be filled by the eldest Eligible Individual not already serving as a member of the Distribution Committee. If at any time fewer than two Eligible Individuals are members of the committee, the Distribution Committee shall be deemed not to exist. The Distribution Committee shall cease to exist upon the death of Grantor.

Upon Grantor's death, Trust shall terminate and all of the trust property shall be distributed to such persons, corporations, or entities, other than Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate, as Grantor may appoint by will. In default of the exercise of this limited power to appoint (Grantor's Testamentary Power), the balance of Trust will be distributed to Grantor's then living descendants, *per stirpes*. If none of Grantor's descendants are living, the balance is to be distributed to one or more entitles that qualify for the estate tax deduction under § 2055 as the Trustee in its sole discretion may choose.

You have requested the following rulings:

1. During the period the Distribution Committee is serving, no portion of the items of income, deductions, and credits against tax of Trust shall be included in computing the taxable income, deductions, and credits of Grantor under § 671.

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 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.

4. 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.

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

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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 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) provides that § 674(a) shall not apply to the powers described in § 674(b) regardless of by whom held.

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.

Section 674(b)(5) provides that § 674(a) shall not apply to a power to distribute corpus to or for a beneficiary, provided that the power is limited by a reasonably definite standard.

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.

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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) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671-677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Based solely on the facts and representations submitted, we conclude an examination of Trust reveals none of the circumstances that would cause Grantor to be treated as the owner of any portion of Trust under §§ 673, 674, 676, or 677 as long as the Committee remains in existence and serving. Because none of the members of Committee have a power exercisable by himself to vest trust income or corpus in himself, none shall be treated as the owner of Trust under § 678(a).

We further conclude that an examination of Trust reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of Grantor under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor 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 gift tax 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 his own benefit or for the benefit of another. But if upon a transfer of

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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) 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.

Under § 25.2511-2(e), a donor is considered as himself having a power if it is exercisable by the donor in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. A trustee, as such, is not a person having an adverse interest in the disposition of the trust property or its income.

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)

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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. Commissioner*, 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. 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 Distribution Committee ceases to exist upon the earlier of such time as there are fewer than two members serving or the 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 because Grantor retained the Grantor's Consent Power.

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 as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard. In this case, the Grantor's Sole Power gives Grantor the power to change the interests of the beneficiaries. Even though Grantor's power is limited by an ascertainable standard, *i.e.*, health, education, maintenance and support, Grantor's power is not a fiduciary power. Accordingly, the retention of Grantor's

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Consent Power and the Grantor's Sole Power over the income and principal causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Further, Grantor retained the Grantor's Testamentary Power to appoint the property to or for the benefit of any person or persons or entity or entities, other than Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. Under § 25.2514-3(b)(2), 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 of Trust for federal tax purposes.

Finally, the Distribution Committee members possess 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 of Trust 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, the Unanimous Member 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 Grantor's contribution of property to Trust 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 from Trust by the Distribution Committee to Grantor will not be a completed gift subject to federal gift tax, by any member of the Distribution Committee. Further, upon the death of Grantor, the fair market value of the property in Trust is includible in Grantor's gross estate for federal estate tax purposes.

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 possessor's estate.

Section 25.2514-1(c)(1) provides 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

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classes other than the possessor or his creditors, or the possessor's estate or the creditors of the estate or expressly not exercisable in favor or the possessor or his creditors, or the possessor's estate or the creditors of his 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 co-holder of a power of appointment 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 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. 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.

The power held by the Distribution Committee members under the Grantor's Consent Power is a power that is exercisable only in conjunction with the creator, Grantor. Accordingly, under § 2514(b), the Distribution Committee members do not possess general powers of appointment by virtue of possessing this power. Further, the power held by the Distribution Committee members under the Unanimous Member Power is not a general power of appointment for purposes of § 2514(b). 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 from Trust to a beneficiary, other than Grantor, pursuant to the exercise of these powers, the Grantor's Consent Power and the Unanimous Member Power, are not gifts

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by the Distribution Committee members. Instead, such distributions are gifts by Grantor.

Based on the facts submitted and the representations made, we conclude that any distribution of property by the Distribution Committee 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 to 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. Specifically, we express no opinion on the trust provisions permitting Trustee to distribute income or principal to trustees of other trusts (decanting) or any other trust provisions not referenced in this private letter ruling.

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, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

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

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