

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-129702-07

Date:  
February 07, 2008

X =

A =

B =

D1 =

State =

Dear :

This letter responds to the letter dated June 15, 2007, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under the Internal Revenue Code.

The information submitted states that X is a minor child of A, who died D1. A owned an individual retirement account (IRA) of which X and X's sibling are the designated beneficiaries. Following A's death, the custodian of IRA set aside X's share of IRA in a separate IRA of which X is the sole beneficiary.

B has been appointed the conservator of X under court order. B proposes to petition the appropriate State court, authorizing the creation of a trust for X's benefit (Trust). The terms of Trust will provide that X is the sole beneficiary of Trust during X's lifetime. The trustee may pay to or apply for the benefit of X so much of the net income and principal of Trust as the trustee in its uncontrolled discretion deems necessary or desirable for X's health, education, maintenance, and support. At the end of each calendar year, the trustee shall accumulate and add to principal any net income not so paid or applied. As X reaches certain ages set forth in Trust, X shall have a power to

withdraw increasing portions of the principal of Trust, eventually receiving the power to withdraw the entire remaining balance of Trust. Upon the X's death, any remaining principal and undistributed income of Trust shall be distributed in such amounts and proportions as X shall designate by a testamentary power of appointment.

The conservator of X proposes to transfer, with State court approval, X's share of the IRA to Trust.

Section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(a) of the Income Tax Regulations provides that if a right described in § 691(a)(1) is disposed of by gift, the fair market value of the right at the time of the gift must be included in the gross income of the donor.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under § 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received.

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 677(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 § 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.

Rev. Rul. 85-13, 1985-1 C.B. 184, concludes that if a grantor is treated as the owner of a trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes. A grantor's receipt of the corpus of a trust in exchange for an unsecured promissory note was treated as an unsecured borrowing of the trust corpus which caused the grantor to be treated as the owner of the trust under § 675(3). The transfer of the trust assets in exchange for the note was not recognized as a sale for federal income purposes.

Based solely on the facts and representations submitted, we conclude that the Trust will be a grantor trust all of which is treated as owned by X under §§ 671 and 677(a). Therefore, assuming the transfer of X's share of IRA to the Trust is not a gift by X, such transfer will not be a sale or disposition of the IRA for federal income tax purposes or a transfer for purposes of § 691(a)(2).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we state or imply no opinion under § 401(a)(9).

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. THOMAS HINES  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

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