

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-103624-03

Date:

May 16, 2003

LEGEND:

Taxpayer =

Grantor =

Daughter =

Trust 1 =

Trust 2 =

Date 1 =

Dear Sir:

This letter responds to your letter dated December 16, 2002, requesting a ruling regarding the gift tax consequences of a proposed agreement regarding the exercise of a testamentary general power of appointment held by Taxpayer.

The facts and representations submitted are summarized as follows: Taxpayer is the son of Grantor. On Date 1, Grantor executed a trust agreement creating Trust 1, an irrevocable trust, for the benefit of his son and daughter. Article II of Trust 1 creates Trust 2, a separate trust for the primary benefit of Taxpayer. The provisions of Article III govern the administration of Trust 2.

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Article III, Paragraph A of Trust 1 provides that unless the property of Trust 2 is sooner exhausted, Trust 2 shall terminate when Taxpayer dies. All properties of Trust 2 shall then pass and be paid: (a) to Taxpayer's then living issue, per stirpes; or (b) if there is none, to the then living issue, per stirpes, of Taxpayer's closest lineal ascendant who has issue then living and who is an issue of Grantor, or if there is none, to Grantor's then living issue, per stirpes; or (c) if Grantor has no issue then living, the properties of the trust shall pass and be paid to Grantor's heirs at law determined as of Taxpayer's death and as if Grantor had died immediately prior to termination of the trust.

Article III, Paragraph B of Trust 1 provides that during the term of Trust 2, the net income and principal of the trust in whole or in part may be paid to Taxpayer as the trustee determines to be necessary for Taxpayer's health, support, maintenance, and education in the standard of living to which Taxpayer has been accustomed. It further provides that the trustee may accumulate and add to principal any net income not so paid.

Article III, Paragraph C of Trust 1 provides that Taxpayer shall have the following testamentary power of appointment with respect to all or any part of the income or principal of Trust 2:

A general power of appointment in favor of any one or more of a group consisting of any of Grantor's issue (except Taxpayer), spouses of Grantor's issue, charities, and one creditor (other than the spouse of Taxpayer, an issue of Taxpayer, or the spouse of an issue of Taxpayer) of Taxpayer, exercisable by will at the Taxpayer's death. Taxpayer may appoint outright or in trust, select the trustees, create new powers of appointment in others, establish administrative powers, create life interests or other limited interests in some with future interests in others, impose lawful conditions on such new powers of appointment, impose lawful spendthrift provisions, and in general appoint by will in any lawful manner; provided always, however, that no appointment by Taxpayer shall benefit directly or indirectly one not an object of this power and that nothing herein shall be construed as authorizing Taxpayer to appoint to himself, his estate, more than one of his creditors or more than one of the creditors of his estate. Paragraph A of this Article is subject to this power.

Taxpayer proposes, as part of a divorce settlement, to enter into an agreement with regard to his exercise of the testamentary general power of appointment granted him under Trust 1, Article III, Paragraph C. Under the proposed agreement, the terms and provisions of the testamentary general power of appointment are the same as provided in Trust 1 except that if Taxpayer elects to appoint all or any portion of Trust 2 to or for the benefit of any issue of his other than Daughter or her issue, then Taxpayer agrees to make an identical or more favorable appointment to or for the benefit of Daughter or her issue; except that, if Daughter is under a severe and permanent mental or physical impairment that would prevent her enjoyment, use or possession of any property

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appointed pursuant to the power of appointment and Taxpayer otherwise has provided amply for her comfort, welfare, health, support, and maintenance needs, then Taxpayer may appoint all or any portion of Trust 2 to or for the benefit of any of his issue without limitation.

Taxpayer requests that we rule that entering into the proposed agreement will not constitute the taxable release of his testamentary general power of appointment for federal gift tax purposes.

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the tax imposed by section 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 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, with certain exceptions, a power that is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate.

Section 2041(a)(2) provides, in part, 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.

Taxpayer was granted a general power of appointment over the principal and income of Trust 2 under Paragraph C of Article III of Trust 1 because Taxpayer may appoint the trust property in favor of a specified group that includes a creditor of Taxpayer's estate. Under the proposed agreement, Taxpayer will not divest himself of all or any portion of the general power of appointment. Taxpayer will retain the right to designate the ultimate beneficiaries of the property over which he holds the power. Taxpayer will continue to have a general power of appointment because after executing the agreement, he will still have the right to designate one of his creditors or one of the creditors of his estate as the beneficiary of Trust 2. Accordingly, we conclude that executing the proposed agreement will not constitute an exercise or release of Taxpayer's general power of appointment and the execution of the proposed agreement will not be treated as a deemed transfer of property for purposes of § 2501. Because Taxpayer holds a testamentary general power of appointment, at Taxpayer's

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death, the value of all of the property of Trust 2 will be includable in Taxpayer's gross estate under § 2041.

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.

Except as specifically ruled herein, we express or imply 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) 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 the taxpayer.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

cc: