

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200840025**

Release Date: 10/3/2008

Index Number: 1361.03-00, 675.02-00,
678.00-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-132899-07

June 13, 2008

G =

A =

B =

C =

E =

D1 =

Trust =

X =

Dear

This responds to a letter dated July 12, 2007, and subsequent correspondence submitted on behalf of G by G's authorized representative, requesting a ruling under §§ 678 and 1361 of the Internal Revenue Code.

The information submitted states that G created Trust on D1 and transferred stock of various corporations to the Trust. The Trust includes four separate trusts for the respective benefit of G's children A, B, C and E ("Beneficiaries").

Section VI.K. provides that with respect to any Trust under the Agreement, until the first to occur of (1) the death of the Settlor or (2) the permanent release by the Trustee of the additional powers of Section K, there shall always be serving a Trustee or

Special Trustee who is not an adverse party as defined by § 672 (“Non Adverse Trustee”). If there is no Non Adverse Trustee for any trust, the then acting Trustee shall immediately appoint a Non Adverse Trustee. Any Non Adverse Trustee shall only possess the powers of Section K and such additional powers as the appointing Trustee shall direct.

Section VI.K.(1) provides that the Non Adverse Trustee may make loans, with or without security, to the Settlor; provided, however, that the then Non Adverse Trustee may release this power for any Separate Trust by written notice to the Settlor and the then current Beneficiary of that Trust. Unless otherwise provided by the Non Adverse Trustee in the release, any release shall apply to the then Non Adverse Trustee and all successor Non Adverse Trustees.

Sections III.B.(3) and III.D.(3) of Trust provides that after a Beneficiary attains age X, that Beneficiary may at any time direct the Trustee to distribute to the Beneficiary all or any portion of the assets of that Beneficiary’s separate trust.

Section 671 provides that where it is specified in §§ 673 to 678 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 this chapter in computing taxable income or credits against the tax of an individual.

Section 675(2) provides that the grantor shall be treated as the owner of any portion of a trust in respect of which a power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

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 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Section 678(b) provides that section 678(a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust or a transferor (to whom § 679 applies) is otherwise treated as the owner under the provisions of §§ 671 to 679 other than this section.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust may be a shareholder if all of it is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States.

Section 1361(c)(2)(B)(i) provides that for purposes of § 1361(b)(1), in the case of a trust described in § 1361(c)(2)(A)(i), the deemed owner shall be treated as the shareholder.

Based solely on the facts submitted and the representations made, we conclude that the power of the Non Adverse Trustee to make loans to the Settlor causes G to be treated as the owner under § 675(2) of each of the separate trusts created by Trust before the Beneficiaries attain age X so long as G is alive and the Non Adverse Trustee has not released the power to make loans to G with or without security with respect to each separate trust. In addition, we conclude that, after the Beneficiaries of the separate trusts created by Trust attain age X, G will continue to be treated as the sole owner of each trust, so long as G is alive and the Non Adverse Trustee has not released the power to make loans to G with or without security with respect to each separate trust. Under the terms of Trust, the power of the Non Adverse Trustee to make loans, with or without security, to the Settlor causes G to be treated as the owner of each trust under § 675(2). Because the separate trusts are grantor trusts under § 675(2) with respect to G, they are grantor trusts in their entirety with respect to G notwithstanding the powers of withdrawal held by the Beneficiaries that would otherwise make the Beneficiaries the owners under § 678 when they attain age X.

The separate trusts, before and after each Beneficiary attains age X, are treated as a permissible S corporation shareholders under § 1361(c)(2)(A)(i). G is treated as the shareholder of any stock held by these trusts, under § 1361(c)(2)(B)(i), so long as G is alive and the Non Adverse Trustee has not released the power to make loans to G with or without security with respect to each separate trust.

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.

This ruling is directed only to the taxpayer who requested 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,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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