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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B04 – PLR-115163-11  
Date:  
September 30, 2011

Re:

**Legend:**

Wife =  
Husband =  
Child 1 =  
Child 2 =  
Child 3 =  
Child 4 =  
Child 5 =  
Child 6 =  
Trust 1 =  
  
Trust 2 =  
  
Trust 3 =  
  
Trustee =  
  
State 1 =  
State 2 =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
State 2 Statute 1 =  
State 2 Statute 2 =  
Years 1-15 =  
Years 18-23 =

Dear \_\_\_\_\_ :

This letter responds to the letter dated March 28, 2011, and subsequent correspondence, submitted by your authorized representative, requesting rulings concerning the income and generation-skipping transfer (GST) tax consequences of a proposed division and subsequent combination of certain trusts.

The facts and representations submitted are summarized as follows:

Prior to September 25, 1985, Wife established Trust 1 on Date 1, and Husband established Trust 2 on Date 2 and Trust 3 on Date 3. All three trusts were irrevocable when established. Wife and Husband are still living. Husband now has six children, Child 1 through Child 3, from a previous marriage, and Child 4 through Child 6, from his marriage to Wife.

### Trust 1

Under Article 1(A) of Trust 1, during the lives of Wife and Husband, the trustee is to hold the trust estate as the principal of a trust for the primary benefit of Child 1, Child 2, Child 3, and any children subsequently born of the marriage of Wife and Husband (Primary Beneficiaries). The trustee is to pay to any one or more of the Primary Beneficiaries so much of the net income and principal, including all, and in such shares, as the trustee, in his absolute discretion, shall deem advisable. On the death of the last to die of Wife and Husband, the trustee shall divide the remaining principal and accumulated income into shares, as provided in Article 1(B).

Article 1(B) provides that the trustee shall divide any property into equal shares, one share for each then living Primary Beneficiary and one share for each Primary Beneficiary not then living but who has then living descendants. Each share set apart for any then living Primary Beneficiary, who has not attained the age of 35 years, shall be held as a separate trust for the primary benefit of that Primary Beneficiary. From each separate trust, the trustee shall pay to the Primary Beneficiary so much of the net income and principal, including all, as the trustee, in his absolute discretion, shall determine. The trustee shall distribute to the Primary Beneficiary one-half of the principal of the beneficiary's separate trust when the Primary Beneficiary reaches age 30, and the remainder of the trust when the Primary Beneficiary reaches age 35. If the Primary Beneficiary dies before reaching age 35, the trustee shall distribute the then principal of the separate trust and any accumulated income to the then living descendants of the Primary Beneficiary, in equal shares per stirpes, or, in default of any such descendant, the trustee shall divide and administer the principal as provided in Article 1(B). Any share set apart for any then living Primary Beneficiary age 35 or above shall be distributed to that Primary Beneficiary. Any share set apart for a Primary

Beneficiary who is not then living but who has then living descendants shall be distributed to those descendants, in equal shares per stirpes.

Article IV provides that if any trust created under the agreement establishing Trust 1 has not terminated by the 21<sup>st</sup> anniversary of the death of the last to die of Wife and the children of Husband who were living on the date of the agreement, that trust shall terminate on that anniversary and be distributed to the person for whose primary benefit the trust was created.

Trust 1 names an individual as trustee and, under Article VI, provides that at any time the trustee may appoint any individual or any corporation as successor or additional trustee of that trust, provided that there shall never be more than two trustees of any trust, and during Wife's life, an individual who is related or subordinate to Wife within the meaning of § 672(c) shall not be eligible to serve as trustee.

Child 4, Child 5, and Child 6 were born after the execution of the trust agreement. Currently, Trust 1 is being held for the benefit of Child 1 through Child 6, the Primary Beneficiaries. Trust 1 was created and funded prior to September 25, 1985. It is represented that no additions have been made to Trust 1 since September 25, 1985. Accordingly, Trust 1, an irrevocable trust, is exempt from GST tax under § 26.2601-1(b)(1).

## Trust 2

Article I (A) of Trust 2 provides that the trustee shall hold the trust estate as the principal of a trust for the primary benefit of Child 4 (the Beneficiary) and pay to the Beneficiary, or any child of his, so much of the principal, in such shares, as the trustee, in his absolute discretion, deems advisable. The trustee may terminate the trust at anytime by distributing the entire principal to the Beneficiary, if the trustee, in his sole discretion, believes that to be in the best interests of the Beneficiary. On the death of the Beneficiary, the trustee shall distribute the principal of the trust to the then living descendants of the Beneficiary, in equal shares per stirpes or, in default of any such descendant, to the then living descendants of Husband, in equal shares per stirpes, or, in default of any such descendant, to Husband's Distributees (defined below).

Article I (A) further provides that in each calendar year of the trust in which any gifts are made or deemed under federal gift tax laws to have been made to the trust, the Beneficiary shall have the right to demand distribution to him of the lesser of (i) \$5,000 or 5 percent of the value of the principal of the trust on December 31 of such calendar year, whichever is greater, and (ii) the amount of such gifts.

Article I (B) states that if a child or children are born to Husband and Wife after the date of the trust agreement, and Husband or any person transfers any property to the trustee for the benefit of any such child, the trustee shall hold such property as principal of a separate trust for the primary benefit of such child on the same terms and

conditions as the trust created for the benefit of Child 4 pursuant to the provisions of Article I (A).

Article VI (A) provides that whenever, on the occurrence of any event, any property is required under Trust 2 to be distributed to the Distributees of any individual, such property shall be distributed to the persons who would be entitled thereto, and in the shares to which such person would be entitled, under the laws of State 1 then in effect, if such individual had died immediately after the occurrence of such event, predeceased by Husband, intestate and domiciled in State 1 and such property had constituted his entire net distributable estate.

Trust 2 names an individual as trustee and, under Article IV(D), provides that at any time Wife or, if she is not living, the trustee or trustees may appoint any individual or any corporation as successor or additional trustee of a trust created under the trust agreement; there shall never be more than two trustees of any trust; and during Husband's life, no individual who is related or subordinate to Husband within the meaning of § 672(c) shall be a trustee under Trust 2.

Under the terms of Trust 2, three separate trusts were created: Trust A to benefit Child 4, Trust B to benefit Child 5, and Trust C to benefit Child 6. The terms of Trust 2 govern Trusts A, B, and C.

Trust A was created and initially funded before September 25, 1985. After that date, in Years 7 through 15 and Years 18 through 23, Husband and Wife made additions to Trust A and elected to gift split on Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Accordingly, the portion of Trust A which is attributable to pre-September 25, 1985 transfers is exempt from GST tax under § 26.2601-1(b)(1). It is represented that the portion of Trust A attributable to the post-September 25, 1985 additions has a zero inclusion ratio.

Trust B was created and initially funded before September 25, 1985. After that date, in Year 2 and Years 7 through 15 and 18 through 23, Husband and Wife made additions to Trust B and elected to gift split on Forms 709. Accordingly, the portion of Trust B which is attributable to the pre-September 25, 1985 transfers is exempt from GST tax under § 26.2601-1(b)(1). It is represented that the portion of Trust B attributable to the post-September 25, 1985 additions has a zero inclusion ratio.

Trust C was created and initially funded after September 25, 1985. Husband and Wife made additions to Trust C in Years 1 and 2 and Years 7 through 15. It is represented that Trust C has a zero inclusion ratio.

### Trust 3

Under Article 1(A) of Trust 3, during Husband's life, the trustee is to hold the trust estate as the principal of a trust for the primary benefit of all of Husband's children,

including any born after the agreement was executed. The trustee is to pay to any one or more of Husband's children or descendants so much of such principal, including all, and in such shares, as the trustee in his absolute discretion shall deem advisable. In each calendar year of the trust in which any gifts are made or deemed under federal gift tax laws to have been made to the trust, each then living child of Husband and descendant of Husband shall have the right to demand distribution to him or her of the lesser of (i) \$20,000 (or twice the amount of the federal gift tax annual exclusion if that is greater), (ii) \$5,000 or 5 percent of the value of the principal of the trust on December 31 of such calendar year, whichever is greater, and (iii) the amount of each such gift divided by the number of such children and descendants living on the date of such gift.

Article I (A) further provides that at Husband's death, the trustee shall divide the trust for Husband's descendants who survive him, in equal shares per stirpes. Each share for a child of Husband shall be held as a separate trust for the primary benefit of that child. The trustee of each separate trust is to pay to the beneficiary child or any descendant of his so much of the principal, including all, as the trustee in his absolute discretion deems advisable. On the death of the beneficiary child, the trustee shall distribute the principal of the trust to the beneficiary child's then living descendants, in equal shares per stirpes or, in default of such descendant, to the then living descendants of Husband, in equal shares per stirpes, or, in default of any such descendant, to Husband's Distributees; provided, however that any share distributable to a descendant of Husband for whose primary benefit a trust exists under Trust 3 shall be added to the principal of such trust. Each share set apart for any other descendant of Husband shall be distributed to that descendant.

Article I (B) provides that if any trust created under the agreement establishing Trust 3 has not terminated by the 21<sup>st</sup> anniversary of the death of the last to die of the descendants of Husband's father who were living on the date of that agreement, the trust shall terminate on that anniversary and be distributed to the person for whose primary benefit the trust was created.

Article VI (A) provides that whenever, on the occurrence of any event, any property shall be required to be distributed to the Distributees of any individual, such property shall be distributed to the persons who would be entitled thereto, and in the shares to which such person would be entitled, under the laws of State 1 then in effect, if such individual had died immediately after the occurrence of such event, predeceased by Husband's wife, intestate and domiciled in that state and such property had constituted his entire net distributable estate.

Trust 3 names an individual as trustee and, under Article IV (D), provides that at any time Wife or, if she is not living, the trustee or trustees may appoint any individual or any corporation as successor or additional trustee of a trust created under the agreement; there shall never be more than two trustees of any trust; and during

Husband's life, no individual who is related or subordinate to Husband within the meaning of § 672(c) shall be a trustee under Trust 3.

Trust 3 is being held for the benefit of Child 1 through Child 6. Trust 3 was created and initially funded before September 25, 1985. After that date, in Years 1 through 4 and Years 6 and 7, Husband and Wife made additions to the trust and elected to gift split on Forms 709. Accordingly, the portion of Trust 3 which is attributable to pre-September 25, 1985 transfers is exempt from GST tax under § 26.2601-1(b)(1). It is represented that the portion of Trust 3 attributable to the post-September 25, 1985 additions has a zero inclusion ratio.

### Proposed Division and Combination

Trust 1, Trust 2, and Trust 3 each provide that the trusts created under the respective trust agreement shall be administered, construed, and the validity and effect of the provisions of the agreement shall be determined, in accordance with the laws of State 1. Effective as of Date 4, the trustees of Trust 1, Trusts A, B, and C, and Trust 3 resigned and appointed Trustee as sole successor trustee. Trustee is located in State 2. Accordingly, State 2 law applies to the administration of Trusts 1, 2, and 3. Trust 1, Trusts A, B, and C, and Trust 3 will be referred to collectively as the Family Trusts.

Trustee proposes to divide and combine the Family Trusts to create separate trusts for each of Child 1 through Child 6. It is represented that the transaction will allow each separate trust to have its own distribution and investment policy for the child who is the beneficiary. After receiving a favorable letter ruling from the Internal Revenue Service, Trustee will execute a Memorandum of Division and Combination of Trusts (Memorandum) to set forth the terms of the division and combination and effectuate the transaction.

Memorandum states that the Trustee has determined it would be administratively convenient and would not impair the rights of Child 1 through Child 6 to modify the structure and administration of the Family Trusts through the division and combination. Trustee proposes to divide Trusts 1 and 3 into six separate and equal shares, one share for each of Child 1 through Child 6. Immediately after the division, the separate shares of Trusts 1 and 3 will be combined into six trusts, each held for the benefit of one of Child 1 through Child 6 (Child 1 through Child 6 Trusts). In addition, Trust A will merge into Child 4 Trust, Trust B will merge into Child 5 Trust, and Trust C will merge into Child 6 Trust. Trustee will give notice of the division and combination to all six children. The effective date of the division and combination will be 30 days after the date of the notice.

Under paragraph 5 of Memorandum, an equal one-sixth share of each and every asset in the Family Trusts will be distributed to each child's trust to the extent mathematically possible (odd shares will be sold for cash and equal one-sixth shares of

the proceeds will be distributed to each child's trust). Paragraph 6 states that upon the effective date and subject to Memorandum, questions of administration (within the meaning of Restatement (Second) of Conflict of Laws § 271) of each child's trust shall be governed by primary reference to Trust 1 to the greatest extent possible. All other non-administrative matters (i.e., distribution, timing, vesting, etc.) for each pro-rata portion of each child's trust that is attributable, respectively, to Trust 1, Trust 2, or Trust 3 will be governed by the respective original trust agreement for Trust 1, Trust 2, or Trust 3. Paragraph 7 provides that the pro-rata portion of each child's trust that is attributable, respectively, to Trust 1, Trust 2, or Trust 3 shall terminate as provided for in the respective original trust agreement.

State 2 Statute 1 provides that after notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. Under State 2 Statute 2, a qualified beneficiary is a beneficiary who is currently entitled to distributions of income or principal from the trust.

Trustee has requested the following rulings:

1. The division and combination of the Family Trusts into Child 1 through Child 6 Trusts, as provided in Memorandum, will not cause the Family Trusts or Child 1 through Child 6 Trusts to become subject to chapter 13.
2. No gain or loss will be recognized for federal income tax purposes under §§ 61 and 1001 by the Family Trusts, or any of the beneficiaries, as a result of the division and combination of the Family Trusts.
3. The assets of Child 1 through Child 6 Trusts will have the same basis under § 1015 and holding period under § 1223 both before and after the division and combination.

Ruling #1:

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 2631(a), as effect in Years 1-18, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(c), as in effect in Years 12-18, provides that the \$1,000,000 amount under § 2631(a) is to be adjusted for inflation for calendar years after 1998 and before 2004.

Section 2631(a), as in effect for Years 19-23, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(c), as in effect for Years 19-23, provides that the GST exemption amount for any calendar year is equal to the applicable exclusion amount under § 2010(c) for each calendar year.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is defined as the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust, and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the tax does not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Section 26.2601-1(b)(1)(ii) provides that any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor held a power that would have caused inclusion of the trust in the settlor's gross estate under § 2038 or 2042 if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(1)(iv)(A) provides that if an addition is made to an irrevocable trust that is excluded from chapter 13 by reason of paragraph (b)(1) of this section, the trust is thereafter deemed to consist of two portions, a portion not subject to chapter 13 (the non-chapter 13 portion) and a portion subject to chapter 13 (the chapter 13 portion), each with a separate inclusion ratio (as defined in § 2642(a)). The non-chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985. The applicable fraction (as defined in § 2642(a)(2)) for the non-chapter 13 portion is deemed to be 1 and the inclusion ratio for such portion is 0. The chapter 13 portion of the trust represents the value of all additions made to the trust after September 25, 1985. The inclusion ratio for the chapter 13 portion is determined under § 2642.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (2) or (3) will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.



Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 2601-1(b)(4)(i)(A), (B), or (C)) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, considers a situation in which, in 1980, Grantor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, per stirpes. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, per stirpes. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

Section 26.2601-1(b)(4)(i)(E), Example 6, considers a situation where, in 1980, the grantor established an irrevocable trust for Grantor's child and the child's issue. In 1983, Grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and Grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the

period provided for in the original trust. Therefore, the example concludes that the trust that resulted from the merger will not be subject to the provisions of chapter 13.

In the present case, Trust 1 is exempt from GST tax under § 26.2601-1(b)(1). Portions of Trust A, Trust B, and Trust 3, which are attributable to pre-September 25, 1985 transfers, are also exempt from GST tax under § 26.2601-1(b)(1). It is represented that portions of Trust A, Trust B, and Trust 3, which are attributable to post-September 25, 1985 transfers, have a zero inclusion ratio and, therefore, are not subject to GST tax. Trust C was funded after September 25, 1985. It is represented that Trust C has a zero inclusion ratio and, therefore, is not subject to GST tax. As noted above, the rules in § 26.2601-1(b)(4)(i) apply in the case of trusts that are exempt from GST tax because the trusts were in existence and irrevocable prior to September 25, 1985. No guidance has been issued concerning modifications that may affect the status of chapter 13 trusts that are exempt from GST tax because sufficient GST exemption was allocated to the trusts to result in an inclusion ratio of zero. At a minimum, a modification that would not affect the GST status of a non-chapter 13 trust should similarly not affect the exempt status of a chapter 13 trust.

The present case involves facts that are similar to Examples 5 and 6 in § 26.2601-1(b)(4)(i)(E). The beneficiaries of the Child 1 through Child 6 Trusts are the same as the beneficiaries of Trusts 1, 2, and 3. The distribution, timing, vesting, and termination provisions for each pro-rata portion of each child's trust that is attributable, respectively, to Trust 1, Trust 2, or Trust 3 will be governed by the respective original trust agreement for Trust 1, Trust 2, or Trust 3.

Based on the facts presented and the representations made, we conclude that the division and combination of the Family Trusts into Child 1 through Child 6 Trusts, as described above, will not shift any beneficial interest in the trusts to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the division and combination of the Family Trusts into Child 1 through Child 6 Trusts, as described above, will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in Trust 1, Trust 2, or Trust 3. Accordingly, based on the facts submitted and representations made, we conclude that the division and combination of the Family Trusts into Child 1 through Child 6 Trusts will not cause the Family Trusts or Child 1 through Child 6 Trusts to become subject to chapter 13.

#### Ruling #2:

Section 61(a) states that, unless otherwise provided, gross income means all income from whatever source derived. Under § 61(a)(3), gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011

for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(c) provides that, except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property must be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent is treated as income or as loss sustained.

Under § 1.1001-1(h)(1), the severance of a trust, occurring on or after August 2, 2007, is not an exchange of property for other property differing materially either in kind or in extent, if (i) an applicable state statute or the governing instrument authorizes or directs the trustee to sever the trust; and (ii) any non-pro rata funding of the separate trusts resulting from the severance, whether mandatory or in the discretion of the trustee, is authorized by an applicable state statute or the governing instrument.

An exchange of property results in the realization of gain or loss under § 1001 if the properties are materially different. Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991). Properties exchanged are materially different if the properties embody legal entitlements "different in kind or extent" or if the properties confer "different rights and powers." Id. at 565. In Cottage Savings, the Court held that mortgage loans made to different obligors and secured by different homes embody distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans. Id. at 566. In defining what constitutes a material difference for purposes of § 1001(a), the Court stated that properties are different in the sense that is material to the Code so long as their respective possessors enjoy legal entitlements that are different in kind or extent. Id. at 564-65.

In Rev. Rul. 56-437, 1956-2 C.B. 507, the Service concluded that a partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest as a result thereof; thus, neither gain nor loss is realized on the partition.

The proposed division and combination of the Family Trusts into Child 1 through Child 6 Trusts, as provided in Memorandum, is authorized by State 2 Statute 1. Paragraph 5 of Memorandum provides that equal one-sixth shares of each and every asset in the Family Trusts will be distributed to each child's trust to the extent mathematically possible (odd shares will be sold for cash and equal one-sixth shares of the proceeds will be distributed to each child's trust). Accordingly, consistent with § 1.1001-1(h)(1) and Rev. Rul. 56-437, the pro rata division and distribution of assets from the Family Trusts into Child 1 through Child 6 Trusts is a not a realization event.

Based on the facts provided and the representations made, we conclude that no gain or loss will be recognized for federal income tax purposes under §§ 61 and 1001 by the Family Trusts, or any of the beneficiaries, as a result of the division and combination of the Family Trusts into Child 1 through Child 6 Trusts, as provided in Memorandum.

Ruling # 3:

Section 1015 provides that the basis in property acquired by a transfer in trust is the same as it would be in the hands of the grantor, with adjustments for gain and loss recognized.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by a transfer in trust (other than a transfer in trust by gift, bequest or devise) the basis of property so acquired is the same as it would be in the hands of the grantor increased by the amount of gain or decreased in the amount of loss recognized to the grantor under the law applicable to the year in which the transfer was made.

Section 1.1015-2(a)(2) applies the uniform basis principles in § 1.1015-1(b) for determining the basis of property where more than one person acquires an interest in property by transfer in trust.

Under § 1.1015-1(b), property acquired by gift has a single uniform basis although more than one person may acquire an interest in the property. The uniform basis of the property remains fixed subject to proper adjustment for items under §§ 1016 and 1017.

Section 1223(2) provides that in determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

In this case, § 1001 and § 61 do not apply to the proposed transaction. Thus, based upon the facts provided and the representations made, we conclude that the assets of each child's trust will have the same basis under § 1015 and holding period under § 1223 both before and after the division and combination of the Family Trusts into Child 1 through Child 6 Trusts, as provided in Memorandum.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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 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 Taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By:

\_\_\_\_\_  
Lorraine E. Gardner, Senior Counsel  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

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