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RE:

Legend

- Date 1 =
- Settlor =
- Trust =
- Individual =
- State =
- Child 1 =
- Child 2 =
- Grandchild 1 =
- Grandchild 2 =
- Grandchild 3 =
- Grandchild 4 =
- Attorney =
- Date 2 =
- Court =
- Date 3 =
- Statute 1 =
- Statute 2 =
- Citation 1 =

Citation 2 =

Citation 3 =

Statute 3 =

Dear :

This letter responds to your authorized representative's letter of August 31, 2011, requesting rulings on the federal income, gift, estate, and generation-skipping transfer (GST) tax consequences of the proposed division and modifications of an irrevocable trust, Trust.

The facts submitted and representations are as follows. On Date 1, Settlor established an irrevocable trust, Trust, for the benefit of Settlor's children and their issue. During his lifetime, Settlor made gifts to Trust. It is represented that timely Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, were filed in connection with each of these gifts and that Settlor allocated his GST exemption to each gift to Trust. It is represented that Trust has an inclusion ratio of zero. The trustee of Trust is Individual. Trust is currently administered in State.

Article Second of Trust names Settlor's children, Child 1 and Child 2, and grandchildren, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4, as living at the time Trust was executed. Trustee represents that Article Second contains a scrivener's error because the first name of Grandchild 2 is written incorrectly.

Article Fourth(a) provides that, until termination of Trust, the trustee may pay to or apply for the benefit of any one or more of the Settlor's children living and the issue of the Settlor's children living from time to time, as much of the net income and principal of Trust as the trustee in the trustee's discretion considers appropriate after taking into consideration any of the several beneficiaries' other income or resources known to the trustee. Any net income not distributed is to be accumulated and added to principal. In exercising his discretion, the trustee may pay more to or apply more for the benefit of some beneficiaries than others, and may make payments to or applications of benefits for one or more beneficiaries to the exclusion of others if the trustee considers this necessary or appropriate in light of the circumstances, the size of the trust estate, and the probable future needs of the beneficiaries.

The last paragraph of Article Fourth(a) provides: "When all the Settlor's children referred to in the Second Article have died, the entire trust as then constituted shall be distributed in equal shares, to the Settlor's children then living issue." Trustee believes that this provision, which does not provide whether the trust assets should be distributed per stirpes (by right of representation) or per capita, is a scrivener's error, which creates an ambiguity regarding how Trust is to be distributed after both Child 1 and Child 2 die. The error was discovered after the death of Settlor. Attorney, who drafted Trust,

declared under penalty of perjury that it was Settlor's intent to distribute Trust's assets by right of representation upon the Trust's termination.

Article Fourth(b) provides that if any person entitled to outright distributions of a trust or a portion of a trust is under age 30 or if the trustee determines there is a compelling reason to postpone a distribution, in complete or partial termination of a trust, the trustee is to hold and administer that beneficiary's trust (or portion of the trust) as a separate trust for his or her benefit. Income of the beneficiary's trust shall be added to principal, and the trustee shall pay to or apply for the benefit of the beneficiary as much of the beneficiary's trust as the trustee in the trustee's discretion considers necessary for the beneficiary's proper support, health, maintenance, and education after taking into consideration any of the beneficiary's other income or resources known to the trustee. When the beneficiary attains age 30, or when in the trustee's discretion, the compelling reason for postponement of distribution ceases to exist, the trustee is to distribute to the beneficiary his or her entire trust. If a beneficiary dies before attaining age 30, his or her trust is to be distributed to his or her issue then living by right of representation.

Article Fifth(e) provides that unless sooner terminated according to other provisions of the trust or the provision of any trust created by the exercise of any power of appointment conferred by this trust, this trust and each trust created by the exercise of such power of appointment shall terminate 21 years after the death of the last survivor of the beneficiaries of Trust who are living on the date of its execution. All principal and undistributed income of a terminated trust is to be distributed to the then income beneficiaries of that trust in the proportion in which they are, at the time of termination, entitled to receive the income.

Article Seventh provides that in the event Trustee resigns, refuses or is unable to act as the trustee, a majority of the then income beneficiaries shall appoint a successor trustee.

Settlor died on Date 2 survived by Child 1, Child 2, and Grandchildren 1 through 4. Grandchild 1 and Grandchild 2 are Child 1's children. Grandchild 3 and Grandchild 4 are Child 2's children. Child 1's family line and Child 2's family line have differing economic interests and needs. Trustee petitioned Court to modify Trust to correct the two scrivener's errors, i.e., Grandchild 2's first name, and correct the omission of the term right of representation; to divide Trust on a pro rata basis into two equal trusts, one trust for the benefit of Child 1 and her descendants (Child 1 Successor Trust) and one trust for the benefit of Child 2 and his descendants (Child 2 Successor Trust) (collectively, Successor Trusts), and to modify each Successor Trust, as described below. On Date 3, Court entered an order (Order) authorizing Trustee to: (i) modify Article Second to correct Grandchild 2's first name, (ii) modify Article Fourth(a) to provide that "When all the Settlor's children referred to in the Second Article have died, the entire trust as then constituted shall be distributed to the then-living issue of

the Settlor's children by right of representation, (iii) divide Trust on a pro rata basis into two equal trusts, the Successor Trusts, and (iv) modify each Successor Trust, as described below.

Child 1 Successor Trust

Article Fourth(a) of Child 1 Successor Trust will be modified to provide that until the termination of the trust, the trustee may pay to or apply for the benefit of Child 1 and Child 1's issue as much of the net income and principal of the trust as the trustee in the trustee's discretion considers appropriate after taking into consideration any of the beneficiaries' other income or resources known to the trustee.

The last paragraph of Article Fourth will be modified to provide that upon the death of Child 1, the trust principal will be distributed to Child 1's then-living issue by right of representation. If there are no then-living issue of Child 1 upon Child 1's death, the trust principal will be added to Child 2 Successor Trust. If Child 2 Successor Trust is not in existence, the trust principal will be distributed to the then-living issue of Child 2 by right of representation.

Article Fourth(b) will be modified to provide that if a beneficiary dies before attaining age 30, his or her trust is to be distributed to his or her then-living issue by right of representation. If the beneficiary dies without issue, then the trust will augment equally the shares of the other then-living issue of Child 1. If there are no then-living issue of Child 1, then the trust will be added to Child 2 Successor Trust. If Child 2 Successor Trust is not in existence, then the trust will be distributed to the then-living issue of Child 2 by right of representation.

Child 2 Successor Trust

Article Fourth(a) of Child 2 Successor Trust will be modified to provide that until the termination of the trust, the trustee may pay to or apply for the benefit of Child 2 and Child 2's issue as much of the net income and principal of the trust as the trustee in the trustee's discretion considers appropriate after taking into consideration any of the beneficiaries' other income or resources known to the trustee.

The last paragraph of Article Fourth will be modified to provide that upon the death of Child 2, the trust principal will be distributed to Child 2's then-living issue by right of representation. If there are no then-living issue of Child 2 upon Child 2's death, the trust principal will be added to Child 1 Successor Trust. If Child 1 Successor Trust is not in existence, the trust principal will be distributed to the then-living issue of Child 1 by right of representation.

Article Fourth(b) will be modified to provide that if a beneficiary dies before attaining age 30, his or her trust is to be distributed to his or her then-living issue by

right of representation. If the beneficiary dies without issue, then the trust will augment equally the shares of the other then-living issue of Child 2. If there are no then-living issue of Child 2, then the trust will be added to Child 1 Successor Trust. If Child 1 Successor Trust is not in existence, then the trust will be distributed to the then-living issue of Child 1 by right of representation.

The Court's Order is contingent upon a favorable private letter ruling from the Internal Revenue Service with respect to the requested rulings.

State Statute 1 provides that on petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.

State Statute 2 provides, in part, that a trustee or beneficiary of a trust may petition the court concerning the internal affairs of the trust to determine questions of construction of a trust instrument and to approve or direct the division of a trust.

Under State law, the primary duty of the court in construing all documents is to give effect to the intention of the maker. Citation 1. Where a trust instrument contains some expression of the trustor's intention, but as a result of a drafting error that expression is made ambiguous, a trial court may admit and consider extrinsic evidence, including the drafter's testimony, to resolve the ambiguity and give effect to the trustor's intention as expressed in the trust instrument. See Citation 2. The mistake of a draftsman is a good ground for the reformation of an instrument which does not truly express the intention of the parties. See Citation 3.

State Statute 3 provides that on petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interest of the beneficiaries.

Trustee requests the following rulings:

1. The modifications of Trust to correct the scrivener's errors related to Grandchild 2's name and the ambiguous provision regarding distributions of the trust assets upon Trust's termination will not alter the inclusion ratio of Trust or the Successor Trusts for GST purposes.
2. The division of Trust into Successor Trusts and the modifications of the Successor Trusts will not alter the inclusion ratio of Trust or the Successor Trusts for GST purposes.

3. The modifications and division of Trust into Successor Trusts will not create a transfer of property that is subject to federal gift tax under § 2501.
4. The modifications and division of Trust into Successor Trusts will not cause any portion of the assets of Trust or the Successor Trusts to be includible in the gross estate of any beneficiary of any such trust under § 2035, 2036, 2037, or 2038.
5. The Successor Trusts will be treated as separate taxpayers for federal income tax purposes pursuant to § 643(f).
6. The modifications and division of Trust into Successor Trusts will not result in any Trust property having been deemed paid, credited, or distributed for purposes of § 661 or 1.661(a)-2(f), and so will not result in the realization by Trust, the Successor Trusts, or a beneficiary of any such trust of any income, gain, or loss under § 661 or 662.
7. The modifications and division of Trust into Successor Trusts will not result in the realization of any income, gain, or loss to Trust, the Successor Trusts, or a beneficiary of any such trust under §§ 61 or 1001.
8. The modifications and division of Trust into Successor Trusts will result in each Successor Trust holding its share of the Trust's property with the same basis as it had when owned by Trust at the time of the division under § 1015.

Rulings 1 and 2

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer (GST) made after October 22, 1986. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (the Act), and § 26.601-1(a) of the Generation-Skipping Transfer Tax Regulations, the GST 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 a transfer under a trust that was irrevocable on September 25, 1985, provided no additions (actual or constructive) were made to the trust after that date.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. Generally, unless specifically

provided otherwise, the rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer 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)(C) provides that a judicial construction of a governing instrument to resolve an ambiguity in the terms of the instrument or to correct a scrivener's error will not cause an exempt trust to be subject to the provisions of chapter 13, if: (1) The judicial action involves a bona fide issue; and (2) The construction is consistent with applicable state law that would be applied by the highest court of the state.

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 § 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) 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, 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. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. However, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Section 26.2601-1(b)(4)(i)(E), Example 3, considers a situation where, in 1980, Grantor established an irrevocable trust for the benefit of Grantor's children, A and B, and their issue. The trust is to terminate on the death of the last to die of A and B, at which time the principal is to be distributed to their issue. However, the provision governing the termination of the trust is ambiguous regarding whether the trust principal is to be distributed per stirpes, only to the children of A and B, or per capita among the children, grandchildren, and more remote issue of A and B. In 2002, the trustee files a construction suit with the appropriate local court to resolve the ambiguity. The court issues an order construing the instrument to provide for per capita distributions to the children, grandchildren, and more remote issue of A and B living at the time the trust terminates. The court's construction resolves a bona fide issue regarding the proper interpretation of the instrument and is consistent with applicable state law as it would be interpreted by the highest court of the state. Therefore, the trust will not be subject to

the provisions of chapter 13.

In Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), the Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Court concluded that the decision of a state trial court as to an underlying issue of state law should not be controlling when applied to a federal statute. Rather, the highest court of the state is the best authority on the underlying substantive rule of state law to be applied in the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be state law after giving "proper regard" to the state trial court's determination and to relevant rulings of other courts of the state. In this respect, the federal agency may be said, in effect, to be sitting as a state court.

In the instant case, Trust became irrevocable after September 25, 1985. It is represented that Settlor allocated sufficient GST exemption to each transfer to Trust to cause Trust to have an inclusion ratio of zero under § 2642. No guidance has been issued concerning changes that may affect the status of trusts that are exempt from GST tax because sufficient GST exemption was allocated to the trust to result in an inclusion ratio of zero. At a minimum, a change that would not affect the GST status of a grandfathered trust should similarly not affect the exempt status of such a trust.

In this case, an examination of the relevant trust instrument, affidavit, and representations of the parties indicate that Settlor intended that Grandchild 2 be named as a grandchild of the Settlor and, accordingly, the use of the wrong first name was a scrivener's error. Further, the evidence indicates that, under the last paragraph of Article Fourth(a), Settlor intended to distribute the entire trust to the then-living issue of Settlor's children by right of representation when all of Settlor's children referred to in Article Second have died. Accordingly, based on the facts presented and the representations made, we conclude that the modifications of Trust to correct the scrivener's errors are consistent with applicable State law that would be applied in the highest court of State. Therefore, we conclude that the proposed modifications of Trust to correct the scrivener's errors will not alter the inclusion ratio of Trust or the Successor Trusts for GST purposes.

Section 26.2601-1(b)(4)(i)(E), Example 5, considers a situation where, in 1980, Grantor established an irrevocable trust for the benefit of Grantor's 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 in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In this case, Settlor's children, Child 1 and Child 2, and grandchildren, Grandchild 1 through 4, are the current beneficiaries of Trust. Income and principal may be distributed to each of the beneficiaries to the exclusion of the other at Trustee's discretion. Trustee proposes to divide Trust along family lines on a pro rata basis into two equal shares, one trust to benefit Child 1 and her descendants and one trust to benefit Child 2 and his descendants. Other than dividing Trust into two separate trusts with each providing for a different family line and correcting the two scrivener's errors, the provisions of the two Successor Trusts are the same as the provisions of Trust.

The proposed division and modifications of Trust will not shift a beneficial interest in Trust to any beneficiary who occupies a lower generation than the persons holding the beneficial interests prior to the division and modification. In addition, the proposed division and modifications will not extend the time for vesting of any beneficial interest in the Successor Trusts beyond the period provided in the original terms of Trust. Accordingly, we conclude that the proposed division and modifications of Trust and Successor Trusts will not alter the inclusion ratio of Trust or Successor Trusts for GST purposes.

Ruling 3

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

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate consideration in money or money's worth, then the amount by which the value

of the property exceeded the value of the consideration is deemed a gift and that amount is included in computing the amount of gifts made during the calendar year.

In this case, the modifications to correct the scrivener's errors do not result in a transfer of property in Trust. The beneficiaries of Successor Trusts will have the same interests after the proposed division and modifications of Trust that they had as beneficiaries under Trust. The beneficial interests, rights, and expectancies of the beneficiaries are the same both before and after the proposed division and modifications of Trust, therefore, no transfer of property will be deemed to occur as a result of the division. Accordingly, based on the facts submitted and the representations made, we conclude that the modifications to correct the two scrivener's errors, the division of Trust into Successor Trusts, and the modifications of Successor Trusts, as described above, will not result in a transfer by any beneficiary of Trust or Successor Trusts that will be subject to federal gift tax under § 2501.

Ruling 4

Section 2035(a) provides that if (1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under § 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of the decedent's death, the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037 provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a

reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the decedent's gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period on the date of the decedent's death.

In the present case, Settlor is the transferor with respect to the assets in Trust. The modifications and division of Trust into Successor Trusts does not result in a transfer by any of the beneficiaries of Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the division and modifications of Trust and Successor Trusts will not cause any property of Trust or Successor Trusts to be includible in the gross estate of any beneficiary of any such trust under § 2035, 2036, 2037, or 2038.

Ruling 5

Section 643(f) provides that, for purposes of subchapter J, under regulations prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1.

Successor Trusts will each have different beneficiaries. Therefore, based upon the facts and the representations made, we conclude that Successor Trusts will be treated as separate taxpayers for federal income tax purposes.

Ruling 6

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662 provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts:

(1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Based upon the facts submitted and representations made, we conclude that the modifications and division of Trust into Successor Trusts is not a distribution under § 661 or § 1.661(a)-2(f).

Ruling 7

Section 61(a)(3) provides that gross income includes gain 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. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

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

Rev. Rul. 56-437, 1956-2 C.B. 507, holds that the conversion of a joint tenancy in stock to a tenancy in common in order to eliminate the survivorship feature and the partition of a joint tenancy in stock are not sales or exchanges. Similarly, divisions of trusts are also not sales or exchanges of trust interests where each asset is divided pro rata among the new trusts. See Rev. Rul. 69-486, 1969-2 C.B. 159 (pro rata distribution of trust assets not a sale or exchange).

In this case, Trust's assets will be distributed equally between Child 1 Successor Trust and Child 2 Successor Trust. Each new trust contains a proportionate share of the assets of Trust equal to the beneficial interest of each beneficiary in Trust's assets.

Accordingly, the modifications and division of Trust will not result in the realization of gain or loss under §§ 61 and 1001. In addition, because the modifications and division of Trust is not a taxable event under § 1001, the holding period of the assets that Child 1 Successor Trust and Child 2 Successor Trust receive from Trust will include the period that Trust held those assets.

Ruling 8

Section 1015(b) provides that if property is acquired by a gift, the basis is the same as it would be in the hands of the donor, except that if such basis (adjusted for the period before the date of the gift under § 1016) is greater than the fair market value of the property at the time of the gift, then for purposes of determining loss the basis shall be such fair market value.

Section 1.1015-1(b) provides that 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 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 in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

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

In this case, because neither § 1001 nor § 61 applies to the proposed transaction, the basis of the assets in each of Child 1 Successor Trust and Child 2 Successor Trust will be the same as the basis of the assets in Trust.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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,

Lorraine E. Gardner, Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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