

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-106402-13

Date:  
July 11, 2013

LEGEND:

Trust 1 =

Trust 2 =

LLC =

A =

x =

LP =

State =

Dear

This responds to a letter date February 8, 2013, and subsequent correspondence submitted on behalf of Trust 1 and Trust 2 (the Trusts) by their authorized representative, requesting rulings under the Internal Revenue Code.

The information submitted states that A created and funded Trust 1. A has the power to revoke Trust 1 at any time or withdraw property from it. Trust 1 owns x percent of LP, a limited partnership formed under the laws of State.

A subsequently created and funded Trust 2, an irrevocable trust. The terms of Trust 2 provide that A shall have the power, solely in a nonfiduciary capacity and without the approval of any person in a fiduciary capacity, to reacquire the trust principal by substituting other property of equivalent value. Trust 2 is the sole member of LLC. LLC is a limited liability company that was formed under the laws of State. LLC is currently a disregarded entity for Federal income tax purposes.

Trust 1 proposes to transfer its entire interest in LP to LLC in exchange for cash and a promissory note issued by LLC payable to Trust 1.

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 the income or credits against the tax of an individual.

Sections 673 through 678 specify the circumstances under which the grantor or a person other than the grantor is treated as the owner of a portion of a trust.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 675(4)(C) provides that the grantor shall be treated as the owner of any portion of a trust in respect of which a power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. The term "power of administration" includes a power to reacquire the trust corpus by substituting other property of an equivalent value.

Section 1.675-1(a) of the Income Tax Regulations provides, in general, that the grantor is treated as the owner of any portion of a trust if under the terms of the trust instrument or circumstances attendant on its operation administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiaries of the trust.

Section 1.675-1(b)(4)(iii) provides that the circumstances which may cause administrative controls to be considered exercisable primarily for the benefit of the grantor include the existence of certain powers of administration exercisable in a

nonfiduciary capacity by any nonadverse party without the approval or consent of any person in a fiduciary capacity. The term “powers of administration” includes a power to reacquire the trust corpus by substituting other property of an equivalent value. If a power is not exercisable by a person as trustee, the determination of whether the power is exercisable in a fiduciary or a nonfiduciary capacity depends on all the terms of the trust and the circumstances surrounding its creation and administration.

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, holds that if a grantor is treated as the owner of any portion of an entire trust, the grantor is the owner of the trust’s assets for federal income tax purposes.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6),(7), or (8) (an eligible entity) can elect its classification for federal tax purposes.

Section 301.7701-3(b)(1)(ii) provides that unless a domestic eligible entity elects otherwise, the entity is disregarded as an entity separate from its owner.

Based solely on the facts and representations submitted, we conclude:

1. Trust 1 will be treated as owned by A under §§ 671, 674(a), and 677(a).
2. The circumstances surrounding the administration of Trust 2 will determine whether the power of administration is exercisable in a fiduciary or nonfiduciary capacity. This is a question of fact, the determination of which much be deferred until the federal income tax returns of the parties involved have been examined by the Internal Revenue Service office where the returns are filed. Therefore, we cannot determine at this time whether A will be treated as the owner of Trust 2, or any portion thereof, under § 675(4)(C). Provided that the circumstances indicate that the power of administration is exercisable in a nonfiduciary capacity, A will be treated as the owner of Trust 2 under §§ 671 and 675.
3. If A is treated as the owner of Trust 2, then the proposed transfer of the interest in LP from Trust 1 to LLC in exchange for cash and a promissory note of equal value will be disregarded for federal income tax purposes, and neither A, Trust 1, Trust 2, or LLC will be subject to federal income tax on such transfer.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the transactions described above under any other provision of the Code, specifically including the gift tax provisions of § 2501 and the generation-skipping transfer tax provisions of § 2601.

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.

This ruling is directed 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 forwarded to X's authorized representatives.

Sincerely,

Melissa C. Liquerman  
Chief, Branch 2  
(Passthroughs & Special Industries)

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