

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-101747-15

Date:  
June 30, 2015

In Re:

Legend

Husband  
Wife  
Bank  
Country  
State  
Company  
Trust

Date 1  
Date 2  
Children

Individuals

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

This letter responds to your authorized representative's letter dated December 31, 2014, requesting income and estate tax rulings with respect to Trust.

The facts and representations submitted are summarized as follows:

Husband and Wife (collectively, the Settlers) are citizens and residents of Country. The Settlers are neither citizens nor residents (within the meaning of Internal Revenue Code § 7701(b)(1)(A)) of the United States. The Settlers are married under the separate property regime of Country as provided by the law of Country. The Settlers have four children, Children. The Children are dual citizens of both Country and the United States and reside in Country.

The Settlers created Trust on Date 1. Trust has been amended and restated several times, most recently on Date 2. Bank, an unrelated party, is Trustee. The beneficiaries of Trust are Husband, Wife, and Children. It is represented that Trust is a foreign trust under § 7701(a)(31)(B). It is also represented that under the law of Country, all property which has been transferred to Trust retains its character as community property or separate property.

Trust is funded with separate property transferred by Husband and separate property transferred by Wife. Trust assets generally consist of: (i) interests in State limited liability companies and foreign entities that own passive investments managed by financial institutions in the United States and real estate located outside the United States, and (ii) the shares of Husband and Wife in Company, a publicly traded corporation in Country.

Section 1.7 of Trust provides, in relevant part, that all community property, if any, transferred to the trustee shall retain its character as community property.

Section 1.8 provides that all separate property transferred to the trustee shall retain its character as separate property of the transferring Settlor.

Section 2.1.1 provides, in relevant part, that while Husband and Wife are both living, the trustee is to distribute or apply for the benefit of Husband and/or Wife, as much income or principal out of the community property as Husband and Wife direct or as the trustee in trustee's discretion deems appropriate for their care, support, comfort, enjoyment, and welfare. In addition, the trustee may distribute income or principal from the community property for the education and support of Children.

Section 2.1.2 provides, in relevant part, that while Husband and Wife are both living, the trustee is to distribute to Husband as much income or principal out of his separate property as he directs or as the trustee in trustee's discretion deems appropriate for his care, support, comfort, enjoyment, and welfare. In addition, the trustee may distribute income or principal from his separate property for the education or support of Children. While Husband and Wife are both living, the trustee is to distribute to Wife as much income or principal out of her separate property as she directs or as the trustee in trustee's discretion deems appropriate for her care, support, comfort, enjoyment, and welfare. In addition, the trustee may distribute income or principal from her separate property for the education or support of Children.

Section 2.3 provides, in relevant part, that the first spouse to die is referred to as the “Deceased Spouse” and the other spouse is referred to as the “Surviving Spouse.” On the death of the Deceased Spouse, the trustee is to pay out of Trust and any additions to Trust by reason of the death of the Deceased Spouse any debts of the Deceased Spouse, the last illness and funeral expenses of the Deceased Spouse, and attorneys’ fees and other administration expenses of the Deceased Spouse’s estate. The trustee may also pay out of Trust any estate taxes arising because of the Deceased Spouse’s death and attributable to the trust estate and the Deceased Spouse’s probate estate.

Section 2.3.3 provides, in relevant part, that the remaining trust estate, including any additions to Trust by reason of the Deceased Spouse’s death and including all community property, the Deceased Spouse’s separate property, and the Surviving Spouse’s separate property are to be distributed to the Surviving Spouse, held and administered subject to the terms of the Survivor’s Trust.

Section 2.4.1.1 provides that during the lifetime of the Surviving Spouse, upon request from the Surviving Spouse, the trustee is to distribute to the Surviving Spouse an amount up to the entire net income of the Survivor’s Trust.

Section 2.4.2 provides, in relevant part, that on the death of the Surviving Spouse, the trustee is to consider selling any interest held directly or indirectly in any yachts, planes, boats, or real property (excluding real property described in Section 2.4.2.4 if applicable). The trustee is to distribute the Survivor’s Trust as follows:

Section 2.4.2.1 provides that the Surviving Spouse is to have the power to appoint the balance of the Survivor’s Trust to any one or more of the creditors of the Surviving Spouse’s estate (excluding any taxing authority) by a will specifically exercising this power of appointment. The trustee is to distribute the balance of the Survivor’s Trust as appointed by the Surviving Spouse, to the extent this power of appointment is exercised. In addition, the trustee is to distribute the balance of the Survivor’s Trust not effectively appointed pursuant to this section.

Section 2.6 provides, in relevant part, that property passing to a child is to be held in a separate trust for such child who would otherwise receive property outright, and the child is to be the beneficiary of his or her separate trust.

Section 3.1 provides, in relevant part, that during the joint lifetimes of Settlers, either Husband or Wife may revoke Trust in whole or in part with respect to community property and with respect to separate property, if any, contributed by the revoking Settlor. Revocation is to be made by written instrument delivered to the trustee and the other settlor.

Section 3.2 provides that the Settlers may at any time during their joint lifetimes amend any of the terms of Trust.

Section 3.3 provides, in relevant part, that after the death of the Deceased Spouse, the Surviving Spouse, while competent, may amend or revoke the Survivor's Trust in part or in whole, but only with the written consent of any two Individuals who are then living and competent as well as a Subordinate Party as defined in § 672(c). Any amendment or revocation pursuant to this section is to be effected by a written instrument signed by Surviving Spouse and the Subordinate Party and delivered to the trustee. Individuals are related to Husband and Wife.

Section 3.4 provides that after the death of the Surviving Spouse, each trust created under the Trust instrument shall be irrevocable and may not be amended or terminated, except by distributions made pursuant to this instrument.

You have requested the following rulings:

1. Husband and Wife will be treated as the owners of Trust for purposes of § 671 during their joint lifetimes.
2. Upon the death of the Deceased Spouse, the Surviving Spouse will be considered as acquiring the Deceased Spouse's separate property under § 1014(b)(2) and will receive a step-up (or step-down) in basis of the Deceased Spouse's separate property equal to the fair market value of the assets as of the date of death of the Deceased Spouse.
3. Upon the death of the Deceased Spouse, the Surviving Spouse will be considered as acquiring the Deceased Spouse's one-half share of all community property that is part of Trust assets under § 1014(b)(2) and will receive a step-up (or step-down) in basis of the Deceased Spouse's one-half share of all community property that is part of Trust assets equal to the fair market value of the assets as of the date of death of the Deceased Spouse.
4. Upon the death of the Surviving Spouse, all of the assets owned by the Survivor's Trust will receive a step-up (or step-down) in basis pursuant to § 1014(b)(4) equal to the fair market value of the assets as of the date of death of the Surviving Spouse.

## LAW AND ANALYSIS

### Ruling 1

Section 671 provides, in relevant part, that where it is specified in subpart E 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 this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D of subchapter J.

Section 1.671-2(e)(1) of the Income Tax Regulations provides, in part, that a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer of property to a trust. However, a person who creates a trust but makes no gratuitous transfers to the trust is not treated as an owner of any portion of the trust under §§ 671 through 677 and § 679.

A gratuitous transfer is defined in § 1.671-2(e)(2)(i) as any transfer other than a transfer for fair market value.

Section 672(f)(1) and § 1.672(f)-1 provide that subpart E of subchapter J (§§ 671 through 679) apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through one or more entities) in computing the income of a citizen or resident of the United States or a domestic corporation.

Section 672(f)(2)(A) provides, in relevant part, that § 672(f)(1) shall not apply to any portion of a trust if (i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person.

Section 676(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 any other provision of subpart E of subchapter J, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Under the terms of Trust, during the joint lifetimes of Settlers, each Settlor retains the absolute power to revest title in him or herself to any community property and any separate property that he or she contributed to Trust. Accordingly, based solely upon the information submitted and the representations made, we conclude that under § 676(a), during their joint lifetimes, each Settlor will be treated as the owner of that portion of Trust constituted of his or her interest in community property, if any, and the separate property that he or she contributed. Furthermore, we conclude that § 672(f)(1) will not prevent each Settlor from being treated under § 676(a) as the owner of that portion of Trust.

### Rulings 2 and 3

Section 1014(a)(1) provides, in relevant part, that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property

passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(2) provides that if property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent and the decedent reserved at all times before his death the right to revoke the trust, then such property is considered, for purposes of § 1014(a), to have been acquired from or to have passed from the decedent.

Section 672(c) defines the term "related or subordinate party" to mean any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any one of the following: the grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

In this case, Trust provides that during the joint lifetimes of both Settlers the trustee is to distribute to the Deceased Spouse as much income or principal from the community property or from the Deceased Spouse's separate property as the Deceased Spouse directs. The Deceased Spouse has also reserved the right to revoke Trust with respect to community property and with respect to the Deceased Spouse's separate property at any time prior to the death of the Deceased Spouse. The Deceased Spouse's separate property and the community property are within the description of property acquired from a decedent under § 1014(b)(2). Accordingly, based solely upon the information submitted and the representations made, we conclude that upon the death of the Deceased Spouse, the Surviving Spouse will be considered as acquiring the Deceased Spouse's separate property under § 1014(b)(2) and will receive a step-up (or step-down) in basis of the Deceased Spouse's separate property equal to the fair market value of the assets as of the date of death of the Deceased Spouse. We also conclude that upon the death of the Deceased Spouse, the Surviving Spouse will be considered as acquiring the Deceased Spouse's one-half share of all community property that is part of Trust assets under § 1014(b)(2) and will receive a step-up (or step-down) in basis of the Deceased Spouse's one-half share of all community property that is part of Trust assets equal to the fair market value of the assets as of the date of death of the Deceased Spouse.

#### Ruling 4

Section 1014(b)(4) provides that property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will is considered, for purposes of § 1014(a), property acquired from or to have passed from the decedent.

In this case, under section 2.4.2.1 of Trust, Surviving Spouse has a general power of appointment over the property in Survivor's Trust, exercisable by will. Accordingly, based upon the information submitted and the representations made, we conclude that the property in the Survivor's Trust fits within the description of property acquired from a decedent under § 1014(b)(4). Thus, to the extent that Surviving Spouse exercises the general power of appointment by will, upon the death of the Surviving Spouse, all of the assets owned by the Survivor's Trust will receive a step-up (or step-down) in basis pursuant to § 1014(b)(4) equal to the fair market value of the assets as of the date of death of the Surviving Spouse.

Please note that section 5 of Rev. Proc. 2015-3, 2015-1 IRB 129, sets forth a list of those areas of the Internal Revenue Code under the jurisdiction of, in relevant part, the Associate Chief Counsel (Passthroughs and Special Industries) relating to issues on which the Internal Revenue Service will not issue letter rulings until the Service resolves the issue through publication of a revenue ruling, a revenue procedure, regulations, or otherwise. Rev. Proc. 2015-37, 2015-26 IRB 1196, amplifies Rev. Proc. 2015-3 by adding the following to section 5.01:

Basis of Property Acquired from a Decedent. Whether the assets in a grantor trust receive a section 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code.

Rev. Proc. 2015-37 is effective for all letter ruling requests received after June 15, 2015. Because the Service received this ruling request prior to June 15, 2015, Rev. Proc. 2015-37 does not apply.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc: