

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-135683-15

Date:

April 29, 2016

Trust 1 =

Trust 2 =

Original Trust =

Decedent =

Beneficiaries =

State =

Date 1 =

Date 2 =

Date 3 =

Trustee =

Court =

Dear

This responds to a letter dated October 6, 2015, and additional information, submitted on behalf of X by X's authorized representative, requesting a ruling under § 678 of the Internal Revenue Code.

Facts

Original Trust was established by Decedent on Date 1. Decedent died on Date 3.

On Date 2, Court ratified the division of Original Trust into separate trusts for the benefit of each child of Decedent, and his or her spouse and issue. Trust 1 resulted from this division..

The governing document for Trust 1 (Trust 1 Agreement) authorizes Trustee, at any time, to distribute all or any portion of the net income or principal or both of Trust 1 directly to any one or more of the Beneficiaries living at the time of such distribution or to the trustees of any trust of which such Beneficiary is a beneficiary.

Pursuant to the authority granted to the Trustee under the Trust 1 Agreement, the Trustee proposes to transfer funds from Trust 1 to Trust 2 which also benefits Beneficiaries. Beneficiaries rights to distributions under the Trust 2 agreement are the same as those under the Trust 1 Agreement.

The governing document of Trust 2 (Trust 2 Agreement) provides that Trust 1 retains the power, solely exercisable by Trust 1, to revest the net income of Trust 2 in Trust 1; provided, however, that such power shall lapse on the last day of such calendar year.

The Trust 2 agreement provides that income includes (i) any dividends, interest, fees and other amounts characterized as income under § 643(b) of the Code, (ii) any net capital gains realized with respect to assets held less than twelve months, and (iii) any net capital gains realized with respect to assets held longer than twelve months.

Law and Analysis

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 that for purposes of subchapter J, 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.

Section 1.671-2(e)(5) provides that if a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally will be treated as the grantor of the transferee trust. See also § 1.671-2(e)(6), Example 8.

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

Section 678(a) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Section 1.671-3(a) provides that when a grantor or other person is treated under subpart E (section 671 and following) as the owner of any portion of a trust, there are included in computing his tax liability those items of income, deduction, and credit against tax attributable to or included in that portion.

Section 1.671-3(c) provides that if the grantor or another person is treated as an owner solely because of his interest in or power over ordinary income alone, he will take into account in computing his tax liability those items which would be included in computing the tax liability of a current income beneficiary, including expenses allocable to corpus which enter into the computation of distributable net income.

Section 643(a) defines the term “distributable net income” as the taxable income of a trust with certain modifications. Under section 643(a)(3), gains from the sale or exchange of capital assets are excluded from distributable net income to the extent those gains are allocated to corpus and are not either (A) paid, credited, or required to be distributed to any beneficiary during the year, or (B) paid, permanently set aside, or to be used for charitable purposes. Under section 643(a)(3), losses from the sale of capital assets are also excluded, except to the extent those losses are taken into account in determining the amount of capital gains that are paid, credited, or required to be distributed to any beneficiary during the year.

Conclusion

Trust 1 will be treated as the owner of the portion of Trust 2 over which they have the power to withdraw under § 678(a). Accordingly, Trust 1 will take into account in computing their tax liability those items which would be included in computing the tax liability of a current income beneficiary, including expenses allocable to which enter into the computation of distributable net income. Additionally, Trust 1 will also take into account the net capital gains of Trust 2.

Except as specifically determined above, no opinion is expressed or implied concerning the federal tax consequences of the transaction described above.

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 X's authorized representatives.

Sincerely,

Faith P. Colson

Faith P. Colson
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

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