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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-110049-05
Date:
January 26, 2006

Legend

Grantor =
Date 1 =
Date 2 =
Date 3 =
Child 1 =
Child 2 =
Trust 1 =

Trust 2 =

Bank =
Company =
Date 4 =
Court 1 =
State =
Court 2 =
Date 5 =

Dear :

This is in response to your representative's letter, dated January 19, 2006, and prior correspondence, requesting rulings regarding the income, gift, and generation-skipping transfer (GST) tax consequences of the proposed construction of a trust agreement.

The facts submitted and the representations made are summarized as follows:

Date 1 Trust Agreement

Grantor created a revocable inter vivos trust on Date 1. The trust was amended and restated on Date 2 and became irrevocable on Grantor's death, Date 3. Date 1, Date 2, and Date 3 are all before September 25, 1985. Under the terms of Article III of the Date 1 trust agreement, upon Grantor's death, the trust assets were divided into two equal shares, one each for Grantor's children: Child 1 and Child 2. Each share is held as a separate trust. Trust 1 is held for the benefit of Child 1 and Trust 2 is held for the benefit of Child 2. Child 1, Child 2, and Bank serve as the co-trustees of both Trust 1 and Trust 2 (collectively, the trusts). No additions have been made to Trust 1 or Trust 2 since Date 3.

During his lifetime, Grantor funded the trusts with shares of Company stock. The common stock of Company is divided into two classes: Class B voting and Class A nonvoting. Shares of Class B voting common stock of Company are not readily marketable, but are convertible into shares of publicly traded Class A at the ratio from time to time determined by Company. A dividend may be declared on the Class A shares and not on the Class B shares. However, if a dividend is declared on the Class B shares, the Class A shares are automatically entitled to a dividend at a significantly reduced rate. The Class B shares now owned by Trust 1 and Trust 2 have been owned in trust since Date 1.

Article IV of the Date 1 trust agreement states the purpose of the trust is to create and preserve unified ownership and control of Company. Accordingly, the trust agreement requires the trustees to maintain and preserve ownership of all the Class B Company stock.

Article III of the Date 1 trust agreement provides that during each child's lifetime, the trustees shall distribute, in quarterly payments, the trust income from each separate trust to or for the benefit of the child for whom the trust is held. The beneficiary may withdraw any or all of the trust principal, except the shares of Class B Company stock.

Upon the death of the child for whom a trust is held, the remaining principal in that child's trust, exclusive of the Class B Company stock, shall be distributed to or for the benefit of the persons, corporations, or other organizations as the child may appoint in his or her will. Upon the death of the child, the shares of Class B Company stock in that child's trust and any principal not appointed, shall be held in further trust for the child's spouse and then for the child's children.

Each trust shall terminate upon the first to occur of (a) the sale or other disposition of all the shares of Company stock, or (b) the expiration of a period of twenty-one years following the death of the survivor of all Grantor's descendants living on Date 3. Upon such termination, the principal shall be distributed to the Grantor's respective grandchild for whom the trust is held or, if he or she is deceased, to his or her then living issue per stirpes.

Each child has exercised his or her power to withdraw the principal other than the Class B Company stock from his or her trust. The only assets of each trust are shares of Class B Company stock, which cannot be distributed, withdrawn, or appointed under the express terms of the Date 1 trust agreement. The Class B Company stock held by each trust represents approximately thirty-eight percent of the outstanding Class B Company shares. The trust expenses of each trust routinely exceed the income produced by the Company stock. Because the terms of the Date 1 trust agreement prohibit the sale or disposition of the Class B Company stock, the trusts have insufficient assets to pay regular trust expenses, including but not limited to compensation of the corporate trustee as authorized under Article IV.

Funding Plan

On Date 4, State Court 1 issued an order to Child 1 and Child 2, as individual trustees, to finalize a funding proposal to provide a means of payment of routine trust expenses. Child 1 and Child 2 agreed upon a plan that would generate the cash needed to pay the trust expenses. Court 1 approved the plan and construed the terms of the Date 1 trust agreement to allow for the sale of Class B Company shares in conjunction with the proposed funding plan in order to pay the trusts' routine expenses while advancing the Date 1 trust agreement's stated purpose of preserving unified and centralized control of Company within the family. On appeal, Court 2 held that Court 1's construction of the Date 1 trust agreement was a sound reflection of Grantor's intent. State's Supreme Court denied a petition for appeal of the Court 2 decision on Date 5. The proposed funding plan provides as follows:

On a regular periodic basis, the trustees will determine the amount of the excess expenses of each separate trust then held under the Date 1 trust agreement. They will also determine the smallest whole number of Class B Company shares from each trust which, if converted into Class A shares and sold on the open market, would generate enough cash to pay the excess expenses of each trust. The trusts created under the Date 1 trust agreement, however, must always own collectively at least fifty-one percent of the then outstanding Class B Company shares.

Two voting trusts will be created (one for the benefit of each child and his or her descendants). Before the conversion of any Class B Company shares, the beneficiary of each trust and his or her respective descendants (on a per stirpes basis) will have the option to purchase voting trust certificates representing beneficial ownership interests in the Class B Company shares.

If any option holders exercise their options to purchase voting trust certificates, they will transfer consideration for the certificates into their respective voting trust. Consideration may be made with either cash or Class A Company shares. The voting trust will then transfer the consideration to the respective trust in exchange for Class B Company shares. The trustees of the voting trusts will always be the same as the

trustees of the respective trust under the Date 1 trust agreement. The trustees of the voting trust will be required to vote the Class B Company shares held in the voting trusts in the same manner as the trustees vote the Class B Company shares held in the trusts under the Date 1 trust agreement.

The trustees of the Date 1 trusts will convert any of the necessary Class B Company shares to pay the necessary expenses, in the event the shares are not transferred to a voting trust and will sell the Class A Company shares as needed to pay trust expenses. However, at the time of an exchange for Class A Company shares, no one will have engaged in any prior negotiations, made any commitments, or taken any actions with regard to the anticipated sale of the Class A Company shares. Excess proceeds from the sale of any Class A Company shares pursuant to this plan will be reserved for payment of future trust expenses and may not be distributed to the trust beneficiary. Furthermore, the trustees will charge corporate trustee commissions against trust principal to the extent that the trust income is insufficient to pay such compensation.

A voting trust certificate owner may transfer any voting trust certificate owned, or cause the Class B Company shares represented by such certificate to be converted to Class A Company shares, but in either case only if such certificate is first offered to the trustees of the trust under the Date 1 trust agreement (or its subtrusts) from which the Class B share represented by the certificate was exchanged, and next to the beneficiary of such trust and his or her respective descendants (on a per stirpes basis).

Section 3.1 of the Voting Trust Agreement provides that except to the extent otherwise provided in the Voting Trust Agreement, the certificate owner shall have all the rights and powers of an owner of a Class B share, other than the right to vote (and any other right associated with the right to vote) that Class B share.

Section 3.2(a) of the Voting Trust Agreement provides that subject to section 3.2(b) of the Voting Trust Agreement (relating to “stock dividends”), any dividend or distribution received by the voting trustees of a voting trust with respect to a Class B share held hereunder immediately shall be paid over to the certificate owner(s) (determined as of the record date for such dividend or distribution) of the voting trust certificate(s) representing that Class B share, in proportion to their respective ownership interests in that Class B share.

Section 3.6 of the Voting Trust Agreement provides that if a conversion is permitted, the Voting Trustees of such Voting Trust shall convert the affected Class B share into Class A shares as quickly as possible, and shall distribute the Class A shares received in such conversion immediately upon receipt to the owner(s) of the voting trust certificates representing the Class B share that was converted, in proportion to their respective ownership interests in that Class B share. Such certificate owner(s) shall surrender the voting trust certificate(s) evidencing such Class B share to the voting

trustees of such voting trust immediately upon receipt of such Class A shares, and such voting trustees shall cancel such voting trust certificate.

There is no power under the Voting Trust Agreement to vary the investment or entitlements of the certificate owners.

The trustees have represented that the Class A shares of Company stock, the Class B shares of Company stock, and the voting trust certificates each provide their holders with typical common stock rights, including: (i) the right to receive dividends; (ii) the right to receive distributions in liquidation; and (iii) the right to participate in the growth of Company. No equity interest in Company is entitled to receive payments ahead of any other equity interest. Thus, with regard to dividends and distributions in liquidation, neither the Class A shares nor the Class B shares (and, accordingly the voting trust certificates) are entitled to receive payments prior to each other. The right to vote, the amount of the dividend, the right of the Class A shares to receive a dividend when a dividend is declared on the Class B shares, and the conversion rights are the only significant differences in the rights between the Class A shares and the Class B shares (and, accordingly, the voting trust certificates). Except for the effect on voting rights, the holding of Company stock in a voting trust governed by the proposed Voting Trust Agreement has the same result as if the stock were held directly by the owner of the voting trust certificate.

Furthermore, the trustees have represented that for each individual or trust, the stock, voting certificate, or cash received in the transaction is approximately equal in value to the consideration provided by the person or trust as consideration. No Company stock surrendered or received in the transaction will be subject to a liability, and no party to the transaction will assume any liability in the transaction. At the time of an exchange pursuant to the proposed plan, each share of Company stock exchanged will be a capital asset in the hands of both the person or trust surrendering and the person or trust receiving such share. Finally, the trustees have represented that Company and each shareholder will pay their own expenses in any transaction.

Rulings Requested

The trustees have requested the following rulings in conjunction with the proposed construction of the trust agreement: (1) the proposed construction will not affect the GST tax exempt status of Trust 1 or Trust 2 under § 26.2601-1(b)(1); (2) the proposed construction will have no federal gift tax consequences to any beneficiary of Trust 1 or Trust 2; (3) the proposed construction of the trust agreement will not result in the recognition of gain or loss to the trusts or to their beneficiaries; (4) the basis of the trust assets will remain the same after the construction as before; (5) the holding periods of the trust assets will remain the same after the construction as before; (6) the transfer of a (i) Class B share from the trustees to the voting trustees, (ii) voting trust certificate from the voting trustees to the transferee of a voting trust certificate, and (iii) Class A share from a purchaser of voting trust certificates to the trustees or to a

certificate owner will not result in the recognition of gain or loss to the trusts, the beneficiaries, the voting trust, or the certificate owners; (7) the basis of the transferred shares will remain the same after the transfer; (8) the holding periods of the transferred shares will remain the same after the transfer; (9) each certificate owner will be treated as the owner of a pro rata portion of the voting trust issuing such certificate for federal income tax purposes and the items of income, deductions and credits against income tax of such voting trust attributable to the owner's pro rata portion of the voting trust will be included in the owner's taxable income or credits against income tax.

Ruling 1

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term "generation-skipping transfer" to include a taxable distribution, taxable termination, and a direct skip.

In this case, Trust 1 and Trust 2 are GST trusts because they provide for distributions to more than one generation of beneficiaries below the grantor's generation. The trustees represent that there have been no additions, actual or constructive, to these trusts after September 25, 1985.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), that relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, Trust 1 and Trust 2 are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

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), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided for otherwise, the rules contained in § 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. Unless specifically noted, 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.

In the present case, the inability of the trusts to pay trust expenses expressly authorized by the Date 1 trust agreement without violating the express prohibition against selling Class B Company shares presents a bona fide issue to be resolved by a court. The Court 1 construction of the Date 1 trust agreement is consistent with the applicable State law as it would be applied by the highest court of the state. Accordingly, the construction of the Date 1 trust agreement and the implementation of the proposed funding plan will not cause Trust 1 or Trust 2 to lose their status as exempt from the GST tax.

Ruling 2

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2502(c) provides that the payment of the gift tax is the liability of the donor.

Section 2511 provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that, where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration is deemed a gift.

Section 25.2511-2(a) provides that the gift tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

In this case, because the proposed construction of the Date 1 trust agreement and implementation of the funding plan does not change the interests of the beneficiaries, no transfer of property will be deemed to occur. Accordingly, we conclude that the construction of the Date 1 trust agreement and the implementation of the proposed funding plan will not cause a transfer, direct or indirect, of property that will be subject to the gift tax imposed by § 2501.

Ruling 3

Section 61(a)(3) of the Code provides that gross income includes gains derived from dealings in property.

Section 1001(a) of the Code provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

Section 1.1001-1(a) of the Income Tax Regulations provides that except as otherwise provided in subtitle A of the Code, 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.

Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), concerns the issue of when a sale or exchange has taken place that results in realization of gain or loss under § 1001 of the Code. In Cottage Savings, a financial institution exchanged its interests in one group of residential mortgage loans for another lender's interests in a different group of residential mortgage loans. The two groups of mortgages were considered "substantially identical" by the agency that regulated the financial institution.

The Supreme Court in Cottage Savings, 499 U.S. at 560-61, concluded that § 1.1001-1 of the regulations reasonably interprets § 1001(a) and stated that an exchange of property gives rise to a realization event under § 1001(a) if the properties exchanged are "materially different."

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. Cottage Savings, 499 U.S. at 564-65. In Cottage Savings, 499 U.S. at 566, the Court held that mortgage loans made to different obligors and secured by different homes did embody distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans.

The Date 1 trust agreement is ambiguous when it comes to paying trust expenses if the trusts hold only Class B Company shares. Based on the trustees' representations about the facts and circumstances of this case, we conclude that the proposed construction of the Date 1 trust agreement is a legitimate way of resolving an ambiguity in the trust agreement.

Court 1 has entered an order directing the individual trustees to finalize a funding proposal to provide a means of payment of the trust expenses that exceed income. Furthermore, Court 1 has determined that the Date 1 trust agreement is ambiguous,

and has construed the trust agreement in order to effectuate Grantor's intentions while allowing for the payment of routine trust expenses. Accordingly, the proposed construction of the Date 1 trust agreement will not result in a disposition event for purposes of § 1001. Therefore, the proposed construction of the Trust Agreement will not result in the recognition of gain or loss to Trust 1, Trust 2, or their beneficiaries.

Rulings 4 & 5

Section 1015 provides that if property is acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be 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 by the grantor on such transfer.

Section 1223(2) provides that in determining the period for which the taxpayer has held property however acquired, there shall be included in the period for which the property was held by any other person, if under Chapter 1 of the Internal Revenue Code such property has, for the purposes of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of such other person.

Because there is no gain or loss recognized as a result of the construction of the Date 1 trust agreement under § 1001, the basis of the trusts' assets will remain the same after the construction as before under § 1015. Furthermore, the holding period of the trusts' assets will remain the same after the construction as before pursuant to § 1223(2).

Rulings 6, 7, & 8

Section 1036(a) provides, in part, that no gain or loss will be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation.

The Code and Regulations under § 1036 do not contain a definition of "common stock." However, in some instances § 1036 transactions also qualify as subchapter C transactions and various provisions under subchapter C provide useful indicia of the criteria for distinguishing preferred stock from common stock for purposes of § 1036. See, e.g., § 351(g)(3)(A) (providing that "preferred stock" means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent); §1.305-5(a) of the Income Tax Regulations (providing that "preferred stock" generally refers to stock which in relation to other classes of stock outstanding enjoys certain limited rights and privileges (generally associated with specified dividend and liquidation priorities) but does not participate in corporate growth to any significant extent); and Rev. Rul. 79-163, 1979-1 C.B. 131 (holding that stock that has either a limited right to receive dividends or a limited right to assets on liquidation is not common

stock, and indicating that significant factors are whether the stock is redeemable and whether the stock possesses an unrestricted interest in the corporation's equity growth).

Although the foregoing definitions are applicable to the specific Code sections or subsections involved and are not addressed to § 1036, these definitions are indicative of the considerations for determining whether stock is common or preferred.

In the present situation, the facts and representations make clear that with regard to important common stock characteristics: (i) none of the Class A shares of Company stock, none of the Class B shares of Company stock, and none of the voting trust certificates is redeemable; (ii) no equity interest in Company is entitled to receive payments (for instance, dividends or distributions in liquidation) ahead of any other equity interest; and (iii) the Class A shares, the Class B shares, and the voting trust certificates each provide their holders with typical common stock rights including an unlimited right to participate in Company's growth and equity.

With regard to the voting trust certificates, it should be noted that the status of an instrument is determined by the instrument's characteristics and not by its title. Thus, if the voting trust certificates exhibit the characteristics of common stock, it is proper to treat them as common stock, regardless of the fact that they are termed "trust certificates." In the present situation, the facts and representations make clear that the voting trust certificates (except for a lack of vote) are identical in all respect to the underlying Company stock held by the voting trusts. In the present situation, neither the Class A shares nor the voting trust certificates provide their holders with voting rights. However, as provided in § 1.1036(a) of the regulations, § 1036 can apply where voting stock is exchanged for nonvoting stock, or nonvoting stock is exchange for voting stock. For purposes of § 1036, how an instrument is denominated and whether it is voting or nonvoting is not determinative of the instrument's status as common stock or preferred stock.

Based solely on the information submitted and the representations as set forth above, we hold as follows:

The Class A shares and the Class B shares (which have no significant differences except for voting rights, the Class A shareholder's right to receive a dividend when the Class B shareholder receives a dividend, the amount of dividends, and conversion rights) are both common stock of Company. Further, the voting trust certificates are properly treated as common stock of Company. Accordingly, any exchange of Class A shares or Class B shares for voting trust certificates or any exchange of Class A shares for Class B shares constitutes an exchange of Company common stock for Company common stock and, thus, is a transaction governed by § 1036(a). For federal income tax purposes: (i) if part of the transaction is undertaken as a transfer of Company stock from Child 1 to Trust 1 and from Trust 1 to the voting trust for the benefit of Child 1 and his descendants, accompanied by the transfer of voting trust certificates from the voting trust to Child 1, then Child 1 and Trust 1 will be

treated as exchanging Company stock directly with each other (rather than making the exchange through intermediaries). Similarly, if part of the transaction is undertaken as a transfer of Company stock from Child 2 to Trust 2 and from Trust 2 to the voting trust for the benefit of Child 2 and her descendants, accompanied by the transfer of voting trust certificates from the voting trust to Child 2, then Child 2 and Trust 2 will be treated as exchanging Company stock directly with each other (rather than making the exchange through intermediaries).

Pursuant to § 1036(a), no gain or loss will be recognized to either Child 1, Trust 1, the voting trust for the benefit of Child 1 and his descendants, or other holders on any exchange of Company common stock (Class A shares, Class B shares, or voting trust certificates) for other Company common stock. Pursuant to §§ 1031(d) and 1223(1), the basis and holding period of any Company common stock received, as described above, by Child 1, Trust 1, the voting trust for the benefit of Child 1 and his descendants, or other holder will be the same as the basis and holding period of the Company common stock surrendered in exchange therefore by the shareholder receiving such Company stock.

Pursuant to § 1036(a), no gain or loss will be recognized to either Child 2, Trust 2, the voting trust for the benefit of Child 2 and her descendants, or other holders on any exchange of Company common stock (Class A shares, Class B shares, or voting trust certificates) for other Company common stock. Pursuant to §§ 1031(d) and 1223(1), the basis and holding period of any Company common stock received, as described above, by Child 2, Trust 2, the voting trust for the benefit of Child 2 and her descendants, or other holder will be the same as the basis and holding period of the Company common stock surrendered in exchange therefore by the shareholder receiving such Company stock.

Ruling 9

Section 301.7701-4(a) of the Procedure and Administration Regulations provides that in general, the term “trust” as used in the Internal Revenue Code refers to an arrangement created either by will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary creators or planners of the trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it will be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this

responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 301.7701-4(c) provides that an "investment" trust will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. See Commissioner v. North American Bond Trust, 122 F. 2d 545 [41-2 USTC ¶ 9644], cert. denied, 314 U.S. 701 (1942). An investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets of the trust, will be classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders.

Section 671 of the Internal Revenue Code provides that where it is specified in §§ 673 through 678 that the grantor or another person shall be treated as the owner of any portion of a trust, there shall be included in computing the taxable income and credits of that person those items of income, deduction, 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 in computing taxable income or credits against the tax of an individual.

Section 1.671-2(e)(1) provides that for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (within the meaning of § 1.671-2(e)(2)) of property to a trust. For purposes of § 1.671-2, the term property includes cash.

Section 1.671-2(e)(2)(i) provides that a gratuitous transfer is any transfer other than a transfer for fair market value.

Section 1.671-2(e)(2)(ii) provides that for purposes of § 1.671-2(e), a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust.

Section 1.671-2(e)(3) provides that a grantor includes any person who acquires an interest in a trust from a grantor of the trust if the interest acquired is an interest in certain investment trusts described in § 301.7701-4(c), liquidating trusts described in § 301.7701-4(d), or environmental remediation trusts described in § 301.7701-4(e).

Section 677 provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such 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 distributed to the grantor, or held or accumulated for future distribution to the grantor.

Based on the information submitted and the representations made, we conclude that each voting trust will be classified as a trust for federal tax purposes under § 301.7701-4. The certificate owners will either have made a gratuitous transfer to the voting trust in exchange for a voting trust certificate or will have purchased a voting trust certificate from a previous owner of a voting trust certificate. Accordingly, pursuant to § 1.671-2(e), each certificate owner will be treated as a grantor of the voting trust with respect to the pro rata portion of the voting trust represented by the voting trust certificate. Because all of the income and principal of the voting trust is to be distributed to each certificate owner based on the certificate owner's pro rata interest in the voting trust, each certificate owner will be treated as the owner of a pro rata portion of the voting trust issuing such certificate under § 677. Each certificate owner shall include in computing its taxable income and credits all items of income, deduction, and credits against tax of its pro rata portion of the voting trust under § 671.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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. In particular, no opinion is expressed as to the federal tax consequences of the sale of Class A Shares in any later sale or as to whether any such sold shares should be treated as sold by the initial holder (for instance, Child 1 or Child 2) rather than being transferred to (and sold by) Trust 1 or Trust 2 (see Commissioner v. Court Holding Co., 324 U.S. 331 (1945) and Rev. Rul. 77-191, 1977-1 C.B. 94, indicating that the federal tax consequences of a transaction are properly determined by the transaction's substance). Furthermore, the above rulings are based on the assumption that the proposed transactions will be undertaken in due course and without excessive delay (with appropriate allowance for delay caused by exigencies beyond the taxpayers' control).

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

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for § 6110 purposes

cc: