Internal Revenue Service

Number: **200744020**
Release Date: 11/2/2007

Index Number: 2601.00-00, 2501.00-00, 2041.02-00, 2514.02-00

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:PSI:04
PLR-149409-05

Date: JUNE 08, 2007

In Re:

Legend:

Decedent =
Spouse =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =
Date 13 =
Date 14 =
Date 15 =
Year =
Court =
Child 1 =
Child 2 =
Child 3 =
Child 4 =
Independent Trustee =
Child 1 Trust =
Child 2 Trust =
Child 3 Trust =
Child 4 Trust =

Trust A	=
Trust B	=
Remaining Trust	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Grandchild 4	=
Grandchild 5	=
Grandchild 6	=
Grandchild 7	=
Grandchild 8	=
Grandchild 1 Trust	=
Grandchild 2 Trust	=
Grandchild 3 Trust	=
Grandchild 4 Trust	=
Grandchild 5 Trust	=
Grandchild 6 Trust	=
Grandchild 7 Trust	=
Grandchild 8 Trust	=
w	=
x	=
y	=

Dear ,

This is in response to your authorized representative's letter dated September 8, 2006, and prior correspondence, in which rulings were requested on the federal gift, estate, and generation-skipping transfer (GST) tax consequences of proposed distributions from certain trusts.

According to the facts submitted, Decedent died on Date 2, leaving a Will dated, Date 1. The Will was submitted for probate to Court. On Date 3, an Order for Final Distribution was entered by Court. After certain distributions of real and personal property outright to Spouse and the devise of certain assets to Trust A, a marital trust for the benefit of Spouse, the remaining property of Decedent's estate was allocated to Trust B, a testamentary trust, with Spouse as trustee. Trust B was funded in Year.

Under the terms of Trust B, during Spouse's lifetime, the Independent Trustee, in his sole discretion, may pay the entire net income in the following priority: first to Spouse for her maintenance and support (giving due consideration to other resources available to Spouse); second to Decedent and Spouse's children for their maintenance and support; third to Decedent and Spouse's grandchildren for their maintenance, support, or education; and fourth, the balance of the income, if any, is to be accumulated and added to the principal of the trust. The Independent Trustee, in his sole discretion, may pay principal to or for the benefit of Spouse for her maintenance, health, and support and “to or for the benefit of” each child and each grandchild for their maintenance, support, education, health, and emergencies.

Under Trust B, upon the death of Spouse, the balance of Trust B is to be divided into four shares - x% for Child 1, x% for Child 2, x % for Child 3, and y% for Child 4. Each share is to be distributed absolutely free and clear of all trusts to the respective child, if such child is living and is 50 years old or older. To date, Spouse is alive and Child 1, 2, and 3 are over 50 years old. Decedent and Spouse have eight grandchildren, Grandchild 1 through 8 (individually Grandchild). Grandchild 1 and 2 are Child 1’s children. Grandchild 3, 4, and 5 are Child 2’s children. Grandchild 6, 7, and 8 are Child 3’s children.

Trust B provides that each and every trust, if any, still in existence, in whole or in part, on the day twenty-one years after the death of the last to survive of all the beneficiaries in this Will named or described who are living at the date of Decedent’s death shall forthwith terminate. At the time of Decedent’s death, Spouse, Child 1, Child 2, Child 3, Grandchild 3, 5, 6, and 8 were alive.

It is represented that the beneficiaries of Trust B had different personal and financial situations and disagreed on the proper investments for Trust B’s assets and its management. Pursuant to Court order, dated Date 4, Child 4 Trust was established for Child 4 and his issue and was allocated y% of the value of Trust B. Remaining Trust was established for the benefit of Spouse, Child 1, Child 2, and Child 3, and their issue and was allocated w% of the value of Trust B. Remaining Trust is the subject of this letter ruling. The dispositive terms of Remaining Trust are the same as Trust B, except that Child 4 and Child 4’s issue have no interest in the trust. The Trustee of Remaining Trust is Spouse. The Independent Trustee of Remaining Trust is not related to Child 1, 2, or 3, or Spouse.

On Date 5, Spouse petitioned Court for a construction of the language “to or for the benefit of” in Trust B which gave the Independent Trustee the discretion to pay principal “to or for the benefit of” each Child and each Grandchild. On Date 6, Court issued an order providing that this language encompasses discretionary distributions during Spouse’s lifetime to trusts for the benefit of each Child and each Grandchild. On Date 7, Trustee of Remaining Trust advanced funds to all eight Grandchildren.

On Date 8, the Internal Revenue Service issued a private letter ruling to the Trustee of Remaining Trust. The ruling concluded that the language “to or for the benefit of” would include discretionary distributions by the Independent Trustee of Remaining Trust to trusts for each Grandchild for purposes of chapter 13 and ruled that such distributions would not cause Remaining Trust or any Grandchild’s Trust to lose their GST exempt status as long as the requirements under § 26.2601-1(b)(4)(i)(A)(1) and (2) were satisfied.

The following trusts were established for Decedent's children and grandchildren. On Date 9, Child 1, 2, and 3, as the "Nominal Settlors," established Grandchild Trust 1 through 8 (individually Grandchild's Trust) to benefit each of the eight grandchildren, Grandchild 1 through 8, respectively, and his or her issue. Child 1 is the Nominal Settlor and trustee of Grandchild 1 Trust and Grandchild 2 Trust. Child 2 is the Nominal Settlor and trustee of Grandchild 3 Trust, Grandchild 4 Trust, and Grandchild 5 Trust. Child 3 is the Nominal Settlor of Grandchild 6 Trust, Grandchild 7 Trust, and Grandchild 8 Trust. Grandchild 6 is the trustee of Grandchild 6 Trust. Grandchild 7 is the trustee of Grandchild 7 Trust. Grandchild 8 is the trustee of Grandchild 8 Trust. The provisions of each Grandchild's Trust are substantially identical.

On Dates 10, 12, and 13, Trustee of Remaining Trust advanced funds to all eight Grandchild's Trusts. On Date 14, Trustee of Remaining Trust advanced funds to seven of the eight Grandchild's Trusts. On Date 15, Independent Trustee of Remaining Trust commuted such advances and caused them to be treated as distributions made by the Independent Trustee.

On Date 11, Child 1, 2, and 3, as the "Nominal Settlors," established Child 1 Trust, Child 2 Trust, and Child 3 Trust (individually Child's Trust), respectively, to benefit each child and his or her issue. Each child is the Nominal Settlor because Decedent is deceased. Each child is the trustee of his or her own trust. The provisions of each Child's Trust are substantially identical.

It is represented that each Child's Trust has not been funded to date. The assets to be transferred into each Child's Trust will come directly from Remaining Trust pursuant to the exercise of the Independent Trustee's discretionary authority to make such distributions. It is represented that Child 1, 2, and 3 have not made and will not make any transfers of property to his or her trust.

The provisions of each Child's Trust are as follows.

Article 1 provides that Child's Trust may receive additional property only by distributions from Remaining Trust.

Article 2, paragraphs 2.1.1 and 2.1.2, provide for the trustee to pay to or apply for the benefit of the Child as much of the net income and/or principal as the trustee, in its discretion, deems necessary for the Child's support, health, and maintenance. Any income that is not distributed is to be added to principal.

Article 2, paragraph 2.1.3, provides that the "Best Interest Trustee" has the power at any time to pay to or apply for the benefit of the Child such amounts, including the entire principal, as the Best Interest Trustee deems to be in the beneficiary's best interests. If all of the Child's Trust assets are distributed, the trust will terminate. The

Best Interest Trustee is a person who is not “related or subordinate” to the Child/Trustee within the meaning of § 672(c) of the Internal Revenue Code.

Article 2, paragraph 2.1.3, provides that the Best Interest Trustee, in his or her sole discretion, may make distributions of income and/or principal from Child’s Trust to Child’s issue (Grandchildren) or to trusts (Grandchild’s Trusts) for the benefit of Child’s issue, as the Best Interest Trustee deems desirable for the best interests of Child’s issue.

Article 2, paragraph 2.2, provides that upon Child’s death, Child has a limited power of appointment over his or her Child’s Trust, exercisable by Child in favor of his or her issue, either outright or in trust, as Child may appoint. Paragraph 2.3 provides that upon Child’s death, and subject to the exercise of Child’s limited power of appointment set forth in paragraph 2.2, the trustee shall divide the remaining balance of the trust estate into equal shares, one share for each child of Child (Grandchild).

Article 3 provides that Child’s Trust is irrevocable and may not be altered or amended in any respect and may not be terminated except through distributions permitted by the trust instrument.

Article 5, paragraph 5.8, provides that each trust being administered hereunder and each trust to which distributions have been made herefrom and/or to which property has been appointed pursuant to the exercise of Child’s testamentary limited power of appointment over Child’s Trust will terminate on the earlier of (a) the exhaustion of all of its assets by distributions authorized hereunder, (b) the end of the “rule against perpetuities period” determined under the law of the state where the trust is being administered from time-to-time applicable to the trusts created hereunder, if any, and (c) the end of the rule against perpetuities period that would apply to Remaining Trust.

Article 6, paragraph 6.2.2, provides that Child has the power to remove the Best Interest Trustee. Paragraph 6.2.3 provides that in no event may a vacancy in the office of the Best Interest Trustee of the respective Child’s Trust be filled with a successor Best Interest Trustee who is a related or subordinate party to Child within the meaning of § 672(c).

Article 6, paragraph 6.1.2, in Child 1 Trust and Child 2 Trust, provides that Child 1 and Child 2 have the power to designate a successor trustee (other than the Best Interest Trustee) of his or her Child’s Trust. However, in no event may Child 1 or Child 2 fill a vacancy in the office of the trustee of Child 1 Trust and Child 2 Trust, respectively, with a successor trustee who is a related or subordinate party, within the meaning of § 672(c), to Child 1 and Child 2.

The provisions of each Grandchild’s Trust are as follows.

Article 1 provides that Grandchild's Trust may receive property only by distributions from Remaining Trust and by distributions from the respective Child's Trust. For example, Grandchild 1 Trust and Grandchild 2 Trust may only receive distributions from Remaining Trust and Child 1 Trust.

Article 2, paragraph 2.1.1 and 2.1.2, provide that the trustee will pay to or for the benefit of Grandchild, as much of the net income and principal of Grandchild's Trust, as the trustee, in the trustee's discretion, deems necessary for Grandchild's support, health, maintenance, and education.

Article 2, paragraph 2.1.3, provides that the Best Interest Trustee is authorized, in the sole discretion of the Best Interest Trustee, at any time, to direct the trustee to distribute in whole or any part of the principal of Grandchild's Trust to Grandchild, as the Best Interest Trustee deems desirable for Grandchild's best interests, and the Best Interest Trustee may be as liberal as possible in the distributions to or on behalf of Grandchild even to the extent of fully exhausting Grandchild's Trust and terminating the interests of the remaindermen.

Article 2, paragraph 2.2, provides that Grandchild's Trust shall be subject to a limited power of appointment exercisable by Grandchild upon his or her death in favor of Grandchild's then living issue, Grandchild's spouse, and/or Grandchild's Registered Domestic Partner. Grandchild may exercise this power in favor of his or her issue, either outright or in trust. If Grandchild exercises this power in favor of his or her spouse or Registered Domestic Partner, Grandchild may only do so to direct that assets are retained in trust for the benefit of such spouse or Registered Domestic Partner. Upon the death of such spouse or Registered Domestic Partner, the trustee shall retain any assets remaining in trust for the benefit of the group composed of Grandchild's living issue, or if none, the assets will be distributed to the issue of Child, by right of representation, and if none, the assets will be distributed to the nieces and nephews of Child.

If or to the extent Grandchild fails to exercise the power of appointment, paragraph 2.3 provides that the trustee will divide the remaining balance of the trust estate into as many equal shares as there are children of Grandchild then living and children of Grandchild, then deceased leaving issue then living and retain in trust any shares allocated to living children of Grandchild and distribute, by right of representation, any shares allocated to the living issue of deceased children of Grandchild.

Article 3 provides that Grandchild's Trust is irrevocable and may not be altered or amended in any respect and may not be terminated except through distributions permitted by the trust.

Article 5, paragraph 5.8, provides that each trust being administered hereunder and each trust to which distributions have been made herefrom will terminate on the earlier of (a) the exhaustion of all of its assets by distributions authorized hereunder, (b) the end of the “rule against perpetuities period” determined under the law of the state where the trust is being administered from time-to-time applicable to the trusts created hereunder, if any, and (c) the end of the rule against perpetuities period that would apply to the Remaining Trust.

Article 6, paragraph 6.1.1(b) provides that the Nominal Settlor has the power to designate a successor trustee, subject to the restriction that the successor trustee may not be a related or subordinate party, as the term is defined in § 672(c), to Child or Grandchild. Paragraph 6.3 provides that the Nominal Settlor has the power to remove and replace any trustee, subject to the restriction that the successor trustee may not be a related or subordinate party, as the term is defined in § 672(c).

Paragraph 6.2 provides that Grandchild has the power to remove the Best Interest Trustee. However, in no event may the successor Best Interest Trustee be a related or subordinate party, as the term is defined in § 672(c), to Grandchild or the Nominal Settlor.

At this time, under the authority granted under Trust B and Remaining Trust, the Independent Trustee proposes to make distributions of principal from Remaining Trust to Child 1 Trust, Child 2 Trust, and Child 3 Trust, for each beneficiary’s maintenance, support, education, health, and emergencies. In addition, the Best Interest Trustee of each Child’s Trust proposes to make distributions from each Child’s Trust to each Child’s issue (Grandchild), and/or to a trust for the benefit of a Grandchild (Grandchild’s Trust).

The following rulings are requested.

1. Trust B and Remaining Trust are exempt from GST tax under chapter 13.

2. Distributions from Remaining Trust by the Independent Trustee to a Child or to a Child’s Trust and distributions from a Child's Trust by the Best Interest Trustee to a Grandchild or to a Grandchild’s Trust will not be subject to chapter 13 if the only assets held in a Child's Trust are assets distributed to it from the Remaining Trust and the terms of such Child’s Trust and Grandchild’s Trust are as outlined herein.

3. The release of a Child's testamentary limited power of appointment over that Child’s Trust during Child’s lifetime or the release of a Grandchild’s testamentary limited power of appointment over that Grandchild's Trust during Grandchild's lifetime will not be subject to gift tax.

4. The exercise, lapse, or release of a Child’s testamentary limited power of appointment and the exercise, lapse, or release of a Grandchild’s testamentary limited power of appointment will not cause the assets of that Child’s Trust or Grandchild’s Trust to be included in that Child’s or Grandchild’s gross estate under § 2041.

5. The exercise, release, or lapse of a Child’s testamentary limited power of appointment and the exercise, release, or lapse of a Grandchild’s testamentary limited power of appointment will not cause a Child’s Trust, Grandchild’s Trust, or any appointed property held in further trust to be subject to chapter 13.

6. Distributions from Remaining Trust by the Independent Trustee to a Child or to a Child's Trust pursuant to the Independent Trustee's discretionary authority to make such distributions and distributions from Child’s Trust by the Best Interest Trustee to a Grandchild or to a Grandchild's Trust pursuant to the Best Interest Trustee's discretionary authority to make such distributions will not be subject to gift tax.

7. The assets of a Child's Trust or a Grandchild’s Trust will not be includible in that Child’s or Grandchild’s gross estate under §§ 2033 through 2038 if the only assets held in the Child's Trust are assets distributed to it from Remaining Trust and the terms of such Child’s Trust are as outlined herein and the only assets held in the Grandchild’s Trust are assets distributed to it from Remaining Trust or Child’s Trust and the terms of such Grandchild’s Trust are as outlined herein.

8. A Child's power to remove the Best Interest Trustee and Child 1’s and Child 2's powers to remove and replace the trustee (other than the Best Interest Trustee) of his or her respective Child's Trust with a trustee who is not a related or subordinate party within the meaning of § 672(c) to that Child will not cause the assets of that Child’s Trust to be included in the gross estate of the Child under § 2041. A Child’s power to designate a successor trustee and power to remove and replace any trustee of the Grandchild’s Trust with a trustee who is not a related or subordinate party within the meaning of § 672(c) to Child or Grandchild will not cause the assets of the Grandchild’s Trust to be included in the gross estate of that Child under § 2041.

LAW AND ANALYSIS

Ruling # 1

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under the Tax Reform Act of 1986 and § 26.2601-1(a)(1) of the Generation-Skipping Transfer Tax Regulations, the GST tax is generally applicable to any generation-skipping transfer made after October 22, 1986. Section 26.2601-1(a)(3) provides that the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. Except where property is includible in a grantor's estate under § 2038 or § 2042, any trust in existence on September 25, 1985, is considered an irrevocable trust under § 26.2601-1(b)(1)(ii)(A). Under State Law, Trust B came into existence on the date of Decedent's death, Date 2, which is prior to September 25, 1985, and no one had the power to amend or revoke the terms of Trust B after Decedent's death.

Under § 26.2601-1(b)(2)(i), the provisions of chapter 13 do not apply to any generation-skipping transfer under a will executed before October 22, 1986, provided that the will is not amended at any time after October 21, 1986, and the decedent dies before January 1, 1987. Property was transferred to Trust B after October 22, 1986. However, in this case, the will was executed on Date 1, a date prior to October 22, 1986, and was not amended any time after October 21, 1986. Decedent died on Date 2, which is a date prior to January 1, 1987. It is represented that no additions have been made to Trust B or Remaining Trust since the date Trust B was funded. Based upon the facts provided and the representations made, we conclude that Trust B is exempt from the provisions of chapter 13.

Section 26.2601-1(b)(4)(i) 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) will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(D)(1) provides that a modification of the governing instrument of an exempt trust 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, if 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.

In Example 5 of § 26.2601-1(b)(4)(E), in 1980, Grantor established an irrevocable trust for the benefit of his 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 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 for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

Trust B was divided into Child 4 Trust and Remaining Trust pursuant to Court order. The dispositive terms of Remaining Trust are the same as Trust B, except that Child 4 and Child 4's issue have no interest in Remaining Trust. The division of Trust B into Remaining Trust and Child 4 Trust does not shift any beneficial interest in Remaining 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 Remaining Trust beyond the period provided for in the original trust. Based upon the facts provided and the representations made, we conclude that Remaining Trust is exempt from the the provisions of chapter 13.

Ruling # 2

Under § 26.2601-1(b)(4)(i)(A), the distribution of trust principal from a GST exempt trust to a new trust will not cause the new trust to be subject to the provisions of chapter 13, if the terms of the governing instrument of the exempt trust authorize distributions to the new trust, without the consent or approval of any beneficiary or court and the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation. If a distributive power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

In Example 1 of § 26.2601-1(b)(4)(E), in 1980, Grantor established an irrevocable trust for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate 21 years after the death of the last child of A to die who was alive at the time Trust was executed. Trust will terminate on the death of A, at which time the remaining principal will be distributed to A's issue, per stirpes. In 2002, the trustee distributes part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate 21 years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C, per stirpes. The terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of Trust, extending beyond any life in being at the date of creation of Trust plus a period of 21 years, plus if necessary, a reasonable period of gestation. Therefore, neither Trust nor the new trust will be subject to the provisions of chapter 13.

Remaining Trust authorizes Independent Trustee to make distributions to new trusts to or for the benefit of each Child and each Grandchild. Trust B does not require the consent or approval of any beneficiary or court for such distributions. Accordingly, the Independent Trustee is authorized to make distributions to or for the benefit of a Child's Trust and a Grandchild's Trust. At Child's death, the balance of Child's Trust will either be appointed to trusts for Child's issue or in default of Child's exercise of his or her limited testamentary power of appointment, will be distributed to Grandchild's Trust. In no event, however, will the term of Child's Trust or trusts created pursuant to the exercise of Child's testamentary limited power of appointment extend beyond a period of 21 years after the death of all of the beneficiaries named in Decedent's will who were living at the time of Decedent's death. At Grandchild's death, the balance of Grandchild's Trust will either be appointed to Grandchild's issue or trusts for the benefit of Grandchild's issue or in default of Grandchild's exercise of his or her testamentary limited power of appointment, will be distributed to trusts for the benefit of Grandchild's issue. In no event, however, will the term of Grandchild's Trust, trusts created under Grandchild's Trust, or trusts established pursuant to the exercise of Grandchild's testamentary limited power of appointment extend beyond a period of 21 years after the death of all of the beneficiaries named in Decedent's will who were living at the time of Decedent's death.

Trustee's distributive power will be exercised by creating another power, Child's testamentary limited power of appointment. Under the regulations, Trustee's distributive power is deemed to be exercised to whatever extent Child's testamentary limited power of appointment may be exercised. In this case, Child's Trust provides that any trust established pursuant to Child's exercise of his or her power must terminate within the same termination period as provided in Remaining Trust. Accordingly, the terms of Child's Trust will not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date Remaining Trust became irrevocable, extending beyond any life in being at the date Remaining Trust became irrevocable plus a period of 21 years.

Each Grandchild's Trust funded pursuant to the exercise of Best Interest Trustee's distributive powers, exercisable over the applicable Child's Trust, grants Grandchild a testamentary limited power of appointment. Therefore, the exercise of the Best Interest Trustee's distributive power is deemed to be exercised to whatever extent Grandchild's testamentary limited power of appointment may be exercised. As in Child's Trust, Grandchild's Trust and any trusts established pursuant to the exercise of Grandchild's testamentary limited power of appointment must terminate on the same date as provided for in Trust B and Remaining Trust. Accordingly, the terms of Grandchild's Trust will not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date Remaining Trust became irrevocable, extending beyond any life in being at the date Remaining Trust became irrevocable plus a period of 21 years.

Therefore, based upon the facts provided and representations made, we conclude that distributions from Remaining Trust by the Independent Trustee to a Child's Trust will not be subject to chapter 13 if such distributions are made by the Independent Trustee under the terms outlined herein. Further, we conclude that distributions from a Child's Trust by the Best Interest Trustee to a Grandchild's Trust will not be subject to chapter 13 if the only assets held in the Child's Trust are assets distributed to it from Remaining Trust and the terms of such Child's Trust are as outlined herein. Remaining Trust and each Child's Trust are exempt from GST tax. Accordingly, we conclude that distributions from Remaining Trust directed by the Independent Trustee to a Child or a Child's Trust and distributions from a Child's Trust by the Best Interest Trustee to a Grandchild or a Grandchild's Trust will not be subject to GST tax under chapter 13.

Ruling # 3

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power. Section 2514(c) provides that the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereinafter the possessor), his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the possessor which is limited to an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

In this case, each Child possesses a testamentary limited power of appointment in favor of his or her issue. Each Grandchild possesses a testamentary limited power of appointment in favor of his or her issue, spouse, and/or Registered Domestic Partner. These powers are not exercisable in favor of the possessor, his estate, his creditors, or the creditors of his estate. Accordingly, these powers are not general powers of appointment as described in § 2514(b).

Child 1, 2, and 3 are the beneficiaries and the trustees of his or her respective trust. Each Child's Trust provides that the trustee may pay to or apply for the benefit of the Child as much of the net income and/or principal as the trustee, in its discretion, deems necessary for the Child's support, health, and maintenance.

Grandchild 6, Grandchild 7, and Grandchild 8 are the trustees of his or her Grandchild's Trust. Grandchild 6 Trust, Grandchild 7 Trust, and Grandchild 8 Trust provide that the trustee may pay to or for the benefit of Grandchild, as much of the net income and principal of Grandchild's Trust, as the trustee, in the trustee's discretion, deems necessary for Grandchild's support, health, maintenance, and education.

In each case, the Child's/trustee's and the Grandchild's/trustee's powers to distribute income and principal are limited to an ascertainable standard. Accordingly, we conclude that the Child's/trustee's and Grandchild's/trustee's powers do not result in the Child or Grandchild having a general power of appointment for purposes of § 2514.

Child 1, 2, and 3 and Grandchild 6, 7, and 8 have the power to remove and replace trustees, subject to the restriction that the successor trustee must not be a related or subordinate party within the meaning of § 672(c). Accordingly, Child 1, 2, and 3 and Grandchild 6, 7, and 8, the beneficiaries of their respective trusts, will not be treated as holding a general power of appointment for purposes of § 2514 by reason of the authority to participate in the removal of a trustee and the appointment of a successor trustee.

Therefore, based upon the facts provided and the representations made, we conclude that the release of a Child's testamentary limited power of appointment over that Child's trust during Child's lifetime and the release of a Grandchild's testamentary limited power of appointment over that Grandchild's Trust during Grandchild's lifetime will not be subject to gift tax.

Ruling # 4

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his or her death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035-2038, inclusive.

Section 2041(b)(1) provides that the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

In this case, each Child has a testamentary limited power of appointment over his or her trust exercisable only in favor of his or her issue. Each Grandchild has a testamentary power of appointment over his or her trust exercisable only in favor of his or her issue, spouse, and/or Registered Domestic Partner. Each power of appointment is not exercisable in favor of him or her, his or her estate, his or her creditors, or the creditors of his or her estate. Accordingly, the powers of appointment are not general powers of appointment as described in § 2041(a)(2).

Section 2041(a)(3) provides that the decedent's gross estate includes any property with respect to which the decedent, by will or by a disposition that is of such nature that if it were a transfer of property owned by the decedent will be includible in the decedent's gross estate under § 2035, 2036, or 2037, exercises a power of appointment created after October 21, 1942, by creating another power of appointment that under the applicable law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

Section 20.2041-3(e) of the Estate Tax Regulations provides that property subject to a power of appointment created after October 21, 1942, which is not a general power, is includible in the holder's gross estate under § 2041(a)(3) only if: (i) its exercise is by will or by disposition that is of such a nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 through 2037 and (ii) if the power is exercised by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone vesting of any estate or interest in such property or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

In this case, pursuant to the terms of the Child's Trust and Grandchild's Trust, each Child's and each Grandchild's power of appointment cannot be exercised to create any further powers of appointment that under local law can be validly exercised so as to postpone the vesting of an interest in the trust property, or suspend the absolute ownership or power of alienation of the trust property, for a period ascertainable without regard to the date of the creation of the first power. As a result, the trust property subject to each Child's and each Grandchild's power of appointment will not be includible in each Child's or each Grandchild's gross estate under § 2041(a)(3).

Therefore, based upon the facts given and the representations made, we conclude that the exercise, lapse, or release of a Child's testamentary limited power of appointment and the exercise, lapse, or release of a Grandchild's testamentary limited power of appointment will not cause the assets of that Child's Trust or Grandchild's Trust to be included in that Child's or Grandchild's gross estate under § 2041.

Ruling # 5

Section 2652(a)(1)(A) provides that, for purposes of chapter 13, the term "transferor" means in the case of any property subject to the tax imposed by chapter 11, the decedent. Section 26.2652-1(a)(1) provides that the individual with respect to whom property was most recently subject to federal estate tax is the transferor of that property for purposes of chapter 13. Section 26.2652-1(a)(2) provides that for purposes of chapter 13, a transfer is subject to federal estate tax if the value of the property is includible in the decedent's gross estate.

In this case, each Child's testamentary power of appointment is limited to appointment of the trust estate to Child's issue, either outright or in trust, and is not exercisable in favor of Child, Child's estate, Child's creditors, or the creditors of Child's estate. Grandchild's testamentary power of appointment is limited to appointment of the trust estate to Grandchild's issue, either outright or in trust, Grandchild's spouse, and/or Grandchild's Registered Domestic Partner, and is not exercisable in favor of Grandchild, Grandchild's estate, creditors of Grandchild, or the creditors of Grandchild's estate. Accordingly, we concluded above that Child's testamentary limited power of appointment and Grandchild's testamentary limited power of appointment are not general powers of appointment. The exercise, lapse, or release of these powers is not a transfer for purposes of the gift tax and does not cause inclusion in the gross estate of the powerholder for purposes of § 2041. Therefore, each Child and Grandchild will not be a transferor of any property subject to these powers for purposes of chapter 13. Accordingly, based upon the facts presented and representations made, we conclude that the exercise, lapse or release of Child's testamentary limited power of appointment or a Grandchild's testamentary limited power of appointment will not cause Child's Trust, Grandchild's Trust, or any appointed property held in further trust to be subject to the provisions of chapter 13.

Ruling # 6

Section 2501(a) imposes a tax on the transfer of property by gift by any individual, resident or nonresident.

Section 2511 provides that the gift tax is imposed 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 25.2511-1(g)(1) of the Gift Tax Regulations provides that a transfer by a trustee of trust property in which the trustee has no beneficial interest does not constitute a gift by the trustee.

In this case, the Independent Trustee of Remaining Trust and the Best Interest Trustee of Child's Trust may direct distribution of assets of each trust pursuant to their discretionary authority under the terms of Remaining Trust and the Child's Trust, respectively. The Independent Trustee of Remaining Trust and the Best Interest Trustee of each Child's Trust are not authorized to make distributions in favor of himself or herself, his or her estate, his or her creditors or the creditors of his or her estate. Accordingly, Independent Trustee and Best Interest Trustee do not have any beneficial interest in the respective trusts. Further, upon the distributions from Remaining Trust to the Child's Trust and from Child's Trust to Grandchild's Trust, Child 1, 2, and 3 and Grandchild 1 through 8 will have the same beneficial interest as they have under Remaining Trust. Accordingly, no transfer of property will be deemed to occur for purposes of § 2511. Therefore, based upon the facts provided and the representations made, we conclude that distributions directed by the Independent Trustee from Remaining Trust to a Child or a Child's Trust and distributions directed by the Best Interest Trustee to a Grandchild or a Grandchild's Trust will not be subject to gift tax.

<u>Ruling # 7</u>

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2036 provides that the value of the gross estate includes 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 an 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 the possession or enjoyment of, or the right to the income from, the property, or 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 2038 provides that the value of the gross estate includes 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 the case of a bona fide sale for an 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 ending on the date of the decedent's death.

Child 1, 2, and 3 are not the grantors of the Child's Trusts. Similarly, no Grandchild is the grantor of his or her Grandchild's Trust. Child 1, 2, and 3 are the "Nominal Settlors" for purposes of establishing their respective Child's Trust and the Grandchild's Trust established for their respective issue. It is represented that each Child and each Grandchild has not made and will not make any transfers to his or her respective Child's Trust and Grandchild's Trust. Further, only the Independent Trustee of Remaining Trust will direct distributions to Child's Trust and Grandchild's Trust from Remaining Trust. Child 1, 2, and 3 and Grandchild 1 through 8 will not exercise or participate in the exercise of any of these discretionary distributions. Accordingly, based upon the facts provided and representations made, we conclude that the assets of a Child's Trust and Grandchild's Trust will not be subject to estate tax under §§ 2036 and 2038 upon the death of the Child or Grandchild if the only assets held in the Child's Trust or Grandchild's Trust are assets distributed to it from Remaining Trust and the terms of such Child's Trust and Grandchild's Trust are as outlined herein.

Ruling # 8

Revenue Ruling 95-58, 1995-2 C.B. 191, states that the grantor's reservation of an unqualified power to remove a trustee and appoint a new trustee (other than the grantor) will not be considered the reservation by the grantor of the trustee's discretionary powers of distribution, for estate tax purposes under §§ 2036 and 2038, if the grantor can only appoint an individual or corporate successor trustee that is not related or subordinate to the grantor within the meaning of § 672(c).

Child 1, 2, and 3 each have the power to remove the Best Interest Trustee. Child 1 and Child 2 have the power to remove and replace the trustee (other than the Best Interest Trustee). However, in each case, the Best Interest Trustee and the other trustees must be replaced with a trustee that is not related or subordinate to the Child within the meaning of § 672(c). Further, each Child is the "Nominal Settlor," not the grantor, of his or her Child's Trust.

Child 1 is the Nominal Settlor of Grandchild 1 Trust and Grandchild 2 Trust. Child 2 is the Nominal Settlor of the Grandchild 3 Trust, Grandchild 4 Trust, and Grandchild 5 Trust. Child 3 is the Nominal Settlor of the Grandchild 6 Trust, Grandchild 7 Trust, and Grandchild 8 Trust. However, Child 1, 2, and 3 are not the grantors of those trusts. Further, each Child's power to designate a successor trustee and power to remove and replace any trustee is limited by the restriction that the new trustee not be related or subordinate, as the term is defined in § 672(c), to Child or Grandchild.

Accordingly, based upon the facts provided and representations made, each Child's power to remove the Best Interest Trustee and Child 1's and 2's power to remove and replace the trustee (other than the Best Interest Trustee) of his or her respective Child's Trust with a trustee that is not a related or subordinate party within the meaning of § 672(c) to the Child will not cause the assets of a Child's Trust to be included in the Child's gross estate under § 2041. Further, each Child's power to designate a successor trustee and power to remove and replace a trustee of a Grandchild's Trust with a trustee that is not a related or subordinate party within the meaning of § 672(c) to Child or Grandchild will not cause the assets of the Grandchild's Trust to be included in the Child's gross estate under § 2041.

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.

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

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
(Office of Passthroughs and
Special Industries)

Enclosure: Copy for section 6110 purpose