Internal Revenue Service

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-121829-06

Date: JULY 25, 2007

In Re:

Legend:

Old Trust =
Husband =
Wife =
Date 1 =
Country 1 =
Country 2 =
x =
y =
Son 1 =
Son 2 =
Son 3 =
Daughter =
Son 4 =
Country 3 =
Trust 1 =
Trust 2 =
State 1 =
State 1 Statute =
State 1 Statute 1 =
Date 2 =
New Trust =
Company =

z =
Foundation =
State 2 =
Individual =
State 1 Statute 2 =
State 1 Statute 3 =
State 1 Statute 4 =
State 2 Statute =

Dear :

This is in response to a letter dated July 19, 2007, and prior correspondence, requesting rulings regarding the estate, gift, and generation-skipping transfer (GST) tax consequences of a proposed transfer of assets from Old Trust to New Trust and the termination of Old Trust.

Facts

The facts submitted and representations made are as follows. On Date 1, Husband and Wife (Settlors) established an irrevocable trust, Old Trust, for the benefit of their children, Son 1, Son 2, Son 3, and Daughter. Settlors have another child, Son 4. Son 4 and his descendants are expressly excluded as beneficiaries of Old Trust. At the time Settlors created Old Trust, Settlors were citizens of Country 1 and residents of Country 2. Settlors initially funded Old Trust with $x and later with $y from funds that were located in Country 2, which is outside of the United States. It is represented that no additional transfers have been made to Old Trust since its creation. The current trustees of Old Trust are Son 1, Son 2, and Son 3.

Under section 1.1 of Article First of Old Trust, Son 1, Son 2, Son 3, and Daughter are the initial beneficiaries (Beneficiaries) of the trust. During the lives of Beneficiaries, the trustees may distribute, in their sole and absolute discretion, at any time, any amount of net income and principal to or for the benefit of any Beneficiaries and their descendants, including all to one to the exclusion of the others. Under section 1.2 of Article First, at the death of the last surviving Beneficiary, the trustees will divide the remaining trust into equal shares, one share with respect to each Beneficiary who has descendants then living. Each share will be held in a separate trust (Trust for Descendant Beneficiaries). If no descendants of any Beneficiary are then living, the principal of the trust will be distributed to one or more charities selected by the trustees.

Under section 2.1 of Article Second, the trustees of each Trust for Descendant Beneficiaries, may distribute, in their sole and absolute discretion, at any time, any amount of net income and principal to or for the benefit of Descendant Beneficiaries of that trust, including all to one to the exclusion of the others.

Under section 2.2 of Article Second, all trusts created under Old Trust terminate 21 years after the death of the survivor of the issue of Settlors' parents who are living at the time Old Trust was executed. However, with respect to any property that may be transferred to Old Trust from Trust 1 or Trust 2, if the law of Country 3 so requires, the respective portions of Old Trust holding such property will terminate 80 years from the date Trust 1 or Trust 2 was executed.

Under section 5.1 of Article Fifth, the trustees may appoint other co-trustees (other than Settlors). Under section 5.2, if a trustee dies, resigns, or otherwise ceases to act the then acting trustees shall have a right to appoint a successor trustee. If at any time no trustee is acting and none is so appointed, the majority of eligible adult beneficiaries at such time shall appoint a successor trustee; if none is so appointed, a specified bank shall be appointed.

Section 5.10 of Article Fifth provides that subject to the limitations of Article Sixth and any effective delegation made by any trustee, if more than one trustee is acting as to any trust hereunder they shall act by unanimous decision of the trustees, or, if such trustees cannot reach a unanimous decision, then by decision of Son 1.

Article Sixth provides that if any trustee at any time acting hereunder is a person in whose favor a discretionary power over income or principal may be exercised or is a parent of any such person, then such trustee shall be precluded from participating in any exercise of such discretionary power to or for the benefit of himself or any person whom he or she is obligated to support, and any such power shall be exercised by the other trustees then acting hereunder.

The law of State 1 governs Old Trust. Under State 1 Statute, a Trustee who is also a beneficiary cannot participate in distributions to himself.

Section (b)(1) of State 1 Statute 1 provides that unless the terms of the instrument expressly provide otherwise, a trustee who has the absolute discretion, under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust for the benefit of one or more proper objects of the exercise of the power, may exercise such discretion by appointing all or part of the principal of the trust in favor of a trustee of a trust under an instrument other than that under which the power to invade is created or under the same instrument, provided, however, that the exercise of such discretion does not reduce any fixed income interest of any income beneficiary of the trust; is in favor of the proper objects of the exercise of the power, and does not violate the limitations of section .

On Date 2, Settlors established another irrevocable trust, New Trust, for the benefit of Son 1, Son 2, Son 3, and Daughter. At the time Settlors created New Trust,

Settlors were citizens of Country 1 and residents of Country 2. New Trust was funded with $z from funds that were located outside of the United States. The trustee of New Trust is Company.

Under Article First, paragraph 1.1 of New Trust, when property is contributed to New Trust, the trustees will divide that property into equal shares, one share each for Son 1, Son 2, Son 3, and Daughter, if living at that time. If anyone of these beneficiaries is deceased, then one share will be set aside for the collective living descendants of the deceased beneficiary. Each share set aside for the collective descendants will be further divided into per stirpital parts for such descendants. Son 1, Son 2, Son 3, Daughter or the living descendant of a deceased beneficiary for whom a per stirpital part is set aside are referred to as the Initial Beneficiaries.

Under Article First, paragraph 1.2, the trustees may distribute, in their sole and absolute discretion, at any time, any amount of net income and principal of each separate share to or for the benefit of any Initial Beneficiary for whom the share is set aside and his or her descendants, including all to one to the exclusion of the others.

Under Article First, paragraph 1.3, upon the death of an Initial Beneficiary, the remaining assets of that deceased Initial Beneficiary's share will be divided into equal shares, one share for each then living child of the deceased Initial Beneficiary and one share for the then living descendants of each then deceased child of the deceased Initial Beneficiary. The share for descendants of a deceased child of a deceased Initial Beneficiary will be further divided into per stirpital parts (each part to be held as a separate share) for such descendants. All such beneficiaries for whom shares are then set aside will also be Initial Beneficiaries and payments from their shares will be made under Article First, paragraph 1.2. If no descendant of the deceased Initial Beneficiary is then living, the remaining assets of the trust directed to be disposed of under Article First, paragraph 1.3, will be divided into per stirpital shares for (and may be added to any share already held for) the then living descendants of the closest lineal ancestor of the deceased Initial Beneficiary who is or was a descendant of the Settlors or was a Settlor. Each descendant for whom such a per stirpital share is held will be an Initial Beneficiary for purposes of Article First. If no descendant of the Settlors is then living, the remaining assets of the trust directed to be disposed of will be distributed under the conditions of Article Third, determined as of the death of the Initial Beneficiary.

Under Article First, paragraph 1.4, on the death of the last to survive of Son 1, Son 2, Son 3, and Daughter, after dividing each share under Article First, paragraph 1.3, the trustees will administer each separate share of New Trust as a separate trust under Article Second, and the Initial Beneficiary of each such share will be known as the Primary Beneficiary of each such separate trust.

Under Article First, paragraph 1.5, Son 4 and his descendants are expressly excluded as beneficiaries of New Trust.

Under Article Second, paragraph 2.1, the trustees may distribute, in their sole and absolute discretion, at any time, any amount of net income and principal of each separate trust to or for the benefit of any Primary Beneficiary for whom the trust is set aside and his or her descendants, including all to one to the exclusion of the others.

Under Article Second, paragraph 2.2, at the death of a Primary Beneficiary, the deceased Primary Beneficiary has a testamentary special power to appoint the remaining assets of the trust to any of Settlors' descendants except the deceased beneficiary, that beneficiary's creditors or estate, the creditors of that beneficiary's estate, and Son 4 and his descendants.

Under Article Second, paragraph 2.3, any unappointed part of the remaining assets of the deceased Primary Beneficiary's trust will be divided into equal shares, one share for each then living child of the deceased Primary Beneficiary and one share for the then living descendants of each then deceased child of the deceased Primary Beneficiary. The share for descendants of a deceased child of a deceased Primary Beneficiary will be further divided into per stirpital parts (each part to be held as a separate share) for such descendants. All such shares will be held as separate trusts, the beneficiaries for whom these trusts are set aside will also be Primary Beneficiaries, and payments from their shares will be made under Article Second. If no descendant of the deceased Primary Beneficiary is then living, the remaining assets of the trust directed to be disposed of under Article Second, paragraph 2.3, will be divided into per stirpital shares for (and may be added to any share already held for) the then living descendants of the closest lineal ancestor of the deceased Primary Beneficiary who is or was a descendant of the Settlors or was a Settlor. Each descendant for whom such a per stirpital trust is held will be a Primary Beneficiary for purposes of Article Second. If no descendant of the Settlors is then living, the remaining assets of the trust directed to be disposed of will be distributed under the conditions of Article Third.

Article Second, paragraph 2.4 provides that it is the Settlors' intent that, on the death of a Primary Beneficiary of any generation, except to the extent that beneficiary exercises his or her power of appointment, the beneficiary's trust will be divided among the beneficiary's surviving descendants, per stirpes, with each descendant becoming a Primary Beneficiary, through all succeeding generations in perpetuity to the maximum extent permitted under State 2 law.

Article Third provides that any property to be disposed of under that Article will be distributed on a per stirpital basis to the then living descendants of Settlors; but, if none, to Foundation; or, if Foundation is not then in existence, to a charity selected by the trustees.

Under Article Fifth, the Settlors authorize, but do not direct, the trustees to appoint the Primary Beneficiary of each trust as cotrustee of his or her trust and to appoint, at any time, any other individual or bank or trust company as cotrustee, as the trustees in their sole and absolute discretion, may select. However, the Settlors cannot be trustees and no beneficiary and no persons related or subordinate to any beneficiary within the meaning of § 672(c) may be a sole trustee. Unless the trustees have changed the situs of New Trust from State 2, at least one of the trustees must be an individual, bank, or trust company domiciled in State 2. The Trust Protector may remove and replace any trustee; provided that any trustee removed by the Trust Protector may not be replaced with the Settlors, a beneficiary, or a person related or subordinate within the meaning of § 672(c) to any beneficiary.

Under Article Sixth, a trustee who is also a current beneficiary of a trust cannot participate as trustee of that trust in decisions (1) regarding distributions to any beneficiary, (2) to exercise powers conferred on trustees under specified provisions of Article Fourth, (3) regarding change of situs, and (4) cannot participate in the exercise of any general power of appointment over that trust. No trustee can participate in decisions regarding distributions from any trust to dependents he is legally obligated to support.

Article Seventh provides that Individual will be the initial Trust Protector of every trust created under New Trust. The Trust Protector may prohibit the trustees from exercising any power conferred by law or New Trust and may require the trustees to give advance notice of any proposed exercise of a power. The Trust Protector may remove and replace any trustee, but must replace the trustee with a person who is not related or subordinate within the meaning of § 672(c) to a beneficiary. The Trust Protector may remove and replace an Investment Advisor. While New Trust is administered under Article First, the Trust Protector Committee, by majority vote, will replace a Trust Protector who has ceased to serve. While New Trust is administered under Article Second, the adult Primary Beneficiary or parent or guardian of a minor Primary Beneficiary of a trust will replace a Trust Protector who has ceased to serve. The initial Trust Protector Committee will be Son 1, Son 2, Son 3, and Daughter. Any member of the Committee who ceases to serve will be replaced by the majority vote of the members.

Under Article Eighth, Son 1 is the initial Investment Advisor of New Trust. Article Eighth, paragraph 8.2 provides that during any period that there is an Investment Advisor in office, the trustees shall sell, vote and take any action with respect to the investment of the trust property upon the direction of the Investment Advisor, and shall take no such action with out such direction. During the period that there is an Investment Advisor in office, the trustees shall have no duty to review or make recommendations with respect to any investment decisions and shall not be liable for

any act or failure to act by the Investment Advisor. During any period that there is no Investment Advisor in office, all of the rights and powers conferred upon the Investment Advisor pursuant to this Article shall be conferred upon the trustees. The Investment Advisor shall act in a fiduciary capacity.

Under Article Eighth, paragraph 8.3, any Investment Advisor has the power to appoint his or her successor Investment Advisor. During any period when no Investment Advisor is serving, the Trust Protector has the power to appoint an Investment Advisor and may remove and replace such Investment Advisor.

Under Article Eighth, paragraph 8.5, the Investment Advisor is prohibited from participating in any exercise of power (1) that the trustee is prohibited from exercising; (2) to vote shares of stock in a company the Investment Advisor controls within the meaning of § 2036(b)(2); (3) that would be an incident of ownership within the meaning of § 2042; or (4) that would render any portion of trust property includible in his gross estate.

Under Article Ninth, paragraph 9.1, the law of State 2 governs New Trust. Under Article Ninth, paragraph 9.3, with respect to any property that may be transferred to New Trust from Trust 1 or Trust 2, if the law of Country 3 so requires, the respective portions of New Trust holding such property will terminate 80 years from the date Trust 1 or Trust 2 was executed. Further, if any other trust created under New Trust is deemed to be subject to the law of a jurisdiction other than State 2, that trust will terminate under the rule of perpetuities of the governing jurisdiction. Upon termination of a trust under Article Ninth, paragraph 9.3, the trust property will be distributed to those persons eligible to receive the income of that trust, in such amounts and proportions as the trustees, in their sole discretion, determine, including all to one to the exclusion of others.

Pursuant to section (b)(1) of State 1 Statute 1, Son 1, Son 2, and Son 3, in their capacity as trustees of Old Trust, will exercise their sole and absolute discretion to distribute all of the principal of Old Trust to New Trust and terminate Old Trust (Proposed Transaction).

Section (f) of State 1 Statute 1 provides that the exercise of the power to invade the principal of the trust under section (b)(1), shall be considered the exercise of a special power of appointment and is subject to State 1 Statutes 2 and 3 (rule against perpetuities).

Under section (d) of State 1 Statute 1, the exercise of the power to invade principal of the trust under section (b)(1) shall be by an instrument written, signed and acknowledged by the trustee and filed with the court having jurisdiction over the trust. A copy of the writing must be served on all persons interested in the trust.

Son 1, Son 2, and Son 3, as the trustees of Old Trust, will submit Filing Pursuant to section (d) of State 1 Statute 1 to Court. The filing states that the trustees of Old Trust are exercising their absolute discretion under section 1.1 of Article First to invade the principal of Old Trust and distribute all the assets of Old Trust to New Trust, thereby, terminating Old Trust. The filing further states that such distribution shall be subject to any and all limitations, liabilities, obligations and encumbrances of any and every kind or nature now in existence in connection with the assets so transferred shall be enforceable with respect to New Trust on the terms and conditions set forth in Old Trust, including without limitation, the State 1 rule against perpetuities as provided by[State 1 Statute 4, State 1 Statute 2, and State 1 Statute 3 and the provisions of section 2.2 of Old Trust.

The Taxpayers, Old Trust, Son 1, Son 2, Son 3, and New Trust have requested the following rulings:

1) The reciprocal trust doctrine does not apply to Old Trust.

2) None of the individual Taxpayers holds a general power of appointment as defined in § 2041 of the Internal Revenue Code with respect to Old Trust or New Trust. Consequently, upon the death of any of the individual Taxpayers, prior to or after the Proposed Transaction, neither the property of Old Trust nor of New Trust will be included in the gross estate of such Taxpayer under § 2041.

3) None of the individual Taxpayers holds a general power of appointment under § 2514(c) with respect to Old Trust or New Trust and, consequently, engaging in the Proposed Transaction will not be considered a taxable gift under § 2514(b).

4) Distributions from and terminating distributions from Old Trust and New Trust pursuant to the Proposed Transaction will not be subject to federal generation-skipping transfer (GST) tax.

Law and Analysis:

Ruling Request # 1:

In United States v. Estate of Grace, 395 U.S. 316, 324 (1969), the U.S. Supreme Court held that where donors create reciprocal trusts which do not change the economic position of each donor with respect to the property, while avoiding the literal terms of the predecessor to § 2036(a)(1), the trust will be includible in that donor's gross estate at death. In Grace, the donor created a trust providing for payment of income to his spouse for her life and payment of principal at the discretion of the trustees. The spouse was granted a testamentary special power to appoint the property to the donor and their

children. Shortly thereafter, the spouse created a virtually identical trust naming the donor as life beneficiary. The Court held that the trusts were interrelated since they were substantially identical and were part of a single transaction designed by the donor. The transfers left each party in the same effective economic position as if they had created trusts naming themselves as life beneficiaries. The Court stated that, "application of the reciprocal trust doctrine is not dependent on a finding that each trust was created as a quid pro quo for the other." Estate of Grace, supra at 324. See also Lehman v. Commissioner, 109 F.2d 99 (2d Cir. 1940), cert. denied, 310 U.S. 637 (1940).

In Estate of Bischoff v. Commissioner, 69 T.C. 32 (1977), the Tax Court held that the Supreme Court's decision in Grace did not limit the application of the reciprocal trust doctrine to situations where there exists the crossing of substantial economic interests, and held that the doctrine also applies to the crossing of powers. In Bischoff, each spouse, within a very short time period, created identical trusts for their grandchildren, naming each other as trustee. The court uncrossed the trust powers and held that the value of the property held in the trust created by each spouse was includible in his or her respective gross estate under § 2036(a)(2) and § 2038 (a)(1). Contra, Estate of Green v. United States, 68 F.3d 151 (6th Cir. 1995) (settler/trustee retained fiduciary powers to reinvest income and to time income and corpus distributions did not constitute retained economic benefit).

Generally, the reciprocal trust doctrine applies to a situation in which X and Y each establish a trust. X creates X Trust to benefit Y and Y's children; Y creates Y Trust to benefit X and X's children. Even though X and Y have not retained a life interest in the trust each established, X and Y are still in the same economic position as if they had created trusts naming themselves as life beneficiaries. The courts have applied the reciprocal trust doctrine to this situation. This doctrine is also applied where the settlors hold trustee powers. See Bischoff.

The instant case is distinguishable from these situations. In this case, the Settlors established one trust, Old Trust, for the benefit of their issue. Settlors did not retain any life interest in Old Trust. Accordingly, the situation in Grace is not present. Further, the Settlors do not hold trustee powers in Old Trust. Accordingly, the situation in Bischoff is not present. The reciprocal trust doctrine applies under §§ 2036 and 2038. In order for those sections to apply, the transferors, in this case, the Settlors, would have had to retain some interest in Old Trust. In this case, the Settlors did not retain any interest in Old Trust as Settlors or trustees, with or without application of the reciprocal trust doctrine. Therefore, based on the facts submitted and the representations made, we conclude that the reciprocal trust doctrine does not apply to Old Trust.

Ruling Requests ## 2 & 3:

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 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 to 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.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that a power of appointment exercisable for the purpose of discharging a legal obligation of the decedent or for his pecuniary benefit is considered a power of appointment exercisable in favor of the decedent and his creditors.

Under § 2514(b), the exercise or release of a general power of appointment created after October 21, 1942, is a transfer of property by the individual possessing such power.

Under § 2514(c), a "general power of appointment" is defined as a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or creditors of his estate.

Section 25.2514-1(c)(1) of the Gift Tax Regulations provides that a power of appointment exercisable for the purpose of discharging a legal obligation of the possessor or for his pecuniary benefit is considered a power of appointment exercisable in favor of the possessor and his creditors.

In the present case, Son 1, Son 2, and Son 3 are trustees and Beneficiaries of Old Trust with discretionary powers, as trustees, to distribute any amounts, in any proportions, of net income and principal to Beneficiaries of Old Trust. Article Sixth of Old Trust prohibits Son 1, Son 2, and Son 3 from making distributions from Old Trust to themselves or to dependents they are legally obligated to support. Further, State 1 Statute prohibits Son 1, Son 2, and Son 3 from making distributions from Old Trust to themselves as beneficiaries. Accordingly, Son 1, Son 2, and Son 3 do not hold general powers of appointment with respect to Old Trust for purposes of §§ 2041 and 2514(b).

Son 1, Son 2, and Son 3 are Beneficiaries of New Trust but are not named as trustees of New Trust and cannot be appointed to act as trustees. The current trustee of New Trust is Company, and at all times that State 2 law governs New Trust, there

must be one bank or trust company acting as trustee. Accordingly, Son 1, Son 2, and Son 3 do not hold any power to make distributions from New Trust to themselves or to any person they are obligated to support.

Son 1 is the initial Investment Advisor of Trust. There are no restrictions to prevent Son 2 and Son 3 from being appointed as a successor Investment Advisor. The Investment Advisor directs the trustee with respect to selling, voting, and taking any action with respect to the investment of trust property. However, the Investment Advisor does not hold any power to make distributions from New Trust to himself or to any person he is legally obligated to support. Accordingly, an individual Taxpayer, in his capacity as Investment Advisor, would not hold a general power of appointment.

Individual is the initial Trust Protector. Son 1, Son 2, and Son 3 are members of the Trust Protector Committee, and may replace the Trust Protector with anyone of them. The Trust Protector may remove and replace a trustee of New Trust. However, the Trust Protector cannot appoint a successor trustee who is related or subordinate within the meaning of § 672(c) to any beneficiary. Thus, the Trust Protector's power to replace a trustee is not a general power of appointment over the assets of New Trust for purposes of §§ 2041 and 2514(b). Further, the Trust Protector may remove and replace the Investment Advisor. However, as stated above, the Investment Advisor cannot exercise any powers of distribution to Beneficiaries of New Trust. Accordingly, a beneficiary, in his capacity as Trust Protector, would not hold a general power of appointment.

Accordingly, based on the facts submitted and the representations made, we conclude that none of the individual Taxpayers holds a general power of appointment as defined in § 2041 with respect to Old Trust or New Trust. Consequently, upon the death of any of the individual Taxpayers, prior to or after the Proposed Transaction, neither the property of Old Trust nor of New Trust will be included in the gross estate of such Taxpayer under § 2041. We also rule that none of the individual Taxpayers holds a general power of appointment under § 2514(c) with respect to Old Trust or New Trust and, consequently, engaging in the Proposed Transaction will not be considered a taxable gift under § 2514(b).

Ruling Request # 4:

Under § 2501(a)(1), a tax is imposed on the transfer of property by gift during each calendar year by an individual, resident or nonresident.

Under § 2511(a), 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; but in the case of a nonresident not a citizen of the

United States, the gift tax shall apply to a transfer only if the property is situated within the United States.

Section 25.2511-3(b)(1) provides that for purposes of applying the gift tax to the transfer of property owned and held by a nonresident not a citizen of the United States at the time of the transfer, real property and tangible personal property constitute property within the United States only if they are physically situated therein.

Section 2601 imposes a tax on every generation-skipping transfer (GST), made by a transferor to a skip person. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip. In general, under § 2652(a)(1) and § 26.2652-(1)(a)(1) of the Generation-Skipping Transfer Tax Regulations, the individual with respect to whom the property was last subject to federal estate or gift tax is the transferor of the property for GST tax purposes.

Section 26.2652-1(a)(2) provides that, for GST purposes, a transfer is subject to federal gift tax if a gift tax is imposed under § 2501(a) (without regard to exemptions, exclusions, deductions, and credits). A transfer is subject to federal estate tax if the value of the property is includible in the decedent's gross estate as determined under § 2031 or § 2103.

Section 2663 provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of chapter 13, including regulations (consistent with the principles of chapters 11 and 12) providing for the application of the GST tax in the case of transferors who are nonresidents not citizens of the United States.

Section 26.2663-2 provides rules for applying the GST tax to transfers by a transferor who is a nonresident not a citizen of the United States (NRA transferor). Section 26.2663-2(b)(2) provides that the GST tax applies to a taxable distribution or a taxable termination to the extent that the initial transfer of property to the trust by a NRA transferor, whether during life or at death, was subject to the federal estate or gift tax within the meaning of § 26.2652-1(a)(2).

When Old Trust was established on Date 1 and when Settlors funded Old Trust, Settlors were citizens of Country 1 and residents of Country 2. When New Trust was established on Date 2 and when Settlors funded New Trust, Settlors were citizens of Country 1 and residents of Country 2. Consequently, for purposes of the GST tax, Settlors were nonresident aliens not citizens of the United States at the time each trust was established and funded. Old Trust and New Trust were funded with cash transferred from Settlors' accounts located outside the United States. Thus, although Settlors, nonresident aliens, transferred cash, which is tangible personal property for purposes of § 2501(a)(2), the cash was not physically situated within the United States

prior to the transfer. Therefore, pursuant to § 25.2511-3(b)(1), the transfer of cash was not a transfer that was subject to the gift tax under § 2501(a).

Because the initial transfers of property to Old Trust and New Trust by Settlors were not subject to gift tax and because Settlors are nonresidents not citizens of the United States at the time of the initial transfers to each trust, the GST tax does not apply to distributions from Old Trust or New Trust.

Accordingly, based on the facts submitted and representations made, we conclude that distributions from and terminating distributions from Old Trust and New Trust pursuant to the Proposed Transaction, to the extent attributable to Settlors' transfers of $x and $y to Old Trust and $z to New Trust, will not be subject to federal generation-skipping transfer tax.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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 in an examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the proposed transaction under the cited provisions or under any other provisions of the Code.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This 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.

Sincerely yours,

_____

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

Enclosure
Copy for § 6110 purposes