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Department of the Treasury
Washington, DC 20224

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, ID No.
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Date: SEPTEMBER 26, 2007

Re:

Legend

Trustee A -
Trustee B and Brother -
Trust 1 -
Husband -
Wife -
Child A -
Child B -
Trust 2 -

Trust 3 -

Trust 4 -

Trust 5 -

Date 1 -
Date 2 -
Date 3 -
Date 4 -
State -
Court -

Guardian Ad Litem -
X -
Citation 1 -

Citation 2 -

State Statute -

Dear :

This is in response to your letter dated September 5, 2007, and prior correspondence, submitted by your authorized representatives, requesting gift, estate, and generation-skipping transfer tax rulings concerning the consolidation of four trusts.

On Date 1, Husband and Wife (Grantors), created and funded Trust 2, an irrevocable trust. The trustees are Trustee A and Trustee B. Until the death of the survivor of Grantors, the trustees shall pay or apply such part or all or none of the net income at any time or from time to time to or for the benefit of any one or more members of the group consisting of such of the Grantors' issue in any degree as shall from time to time be living as the trustees, in their sole discretion, may deem advisable, provided, however, that if no such issue shall be living, then and in such event the members of such group shall consist of such of Husband's mother and issue of Wife, as shall be living from time to time during the continuation of this trust. In paying or applying income, the trustees may exclude any one or more members of the group from any one or more payments or applications and may pay or apply different amounts from time to time to or for the benefit of any beneficiary as the trustees, in their sole discretion, may deem advisable. The trustees may also, but need not, consider the wishes and financial circumstances of each beneficiary, bearing in mind that the happiness and financial security of all of the Grantors' children are the Grantors' primary concerns.

In addition to the net income of the trust, the trustees may also pay or apply, at any time or from time to time, to or for the benefit of any person to whom current income might then be distributed such part or all of the principal of the trust as the trustees, in their sole discretion, may deem advisable for the support, maintenance, and education of such person. In the event all of the principal is paid or applied, the trust will terminate. No adjustment shall be required upon termination of the trust on account of any unequal payments or applications of income or principal made by the trust pursuant to the discretionary powers granted. Notwithstanding any other provisions of the trust to the contrary, the trustees shall not make any distributions of income or principal of the trust to or for the benefit of any person which would or may be deemed to satisfy any legal obligation of either of the Grantors.

Upon the death of the survivor of the Grantors, if issue of the Grantors shall then be living the trustees shall divide the trust into such number of equal shares that there will be one equal share for each then living child of the Grantors and one equal share for the issue, collectively, of each then deceased child of the Grantors who shall leave issue then living, and the trustees will dispose of the shares as follows. The trustees will distribute each share set apart for a child of the Grantors who has attained age 30, or for the issue of a then deceased child of the Grantors, to such child or such issue, per stirpes, as the case may be. The trustees will hold each share set apart for a child of the Grantors who has not

attained age 30, in trust, as a separate trust and until such child reaches age 21, shall pay or apply such part or all or none of the net income of trust at any time or from time to time to or for the benefit of such child as the trustees, in their sole discretion, may deem advisable. Upon such child attaining age 21, and thereafter, during the continuation of the trust, the trustees shall pay or apply the net income at least quarter-annually to or for the benefit of such child.

In addition to the net income of the trust, the trustees may also pay or apply to or for the benefit of such child such part or all of the principal of trust as the trustees, in their sole discretion, may deem advisable for the support, maintenance, education, or general welfare of the child. In the event all of the principal of the trust is paid, such trust shall terminate. The trustees shall distribute to any child for whom a trust is created, upon such child attaining age 30, all of the remaining principal of the trust. In the event any child dies prior to attaining age 30, the trustees shall distribute the remaining principal to and among such persons (exclusive of the child, his or her estate, his or her creditors, or creditors of his or her estate).

If upon the death of the survivor of the Grantors, or upon termination of any trust created under Trust 2, no issue of the Grantors shall then be living, the trustees shall distribute the then remaining principal to Brother, if he shall then be living, or, if he shall not then be living, to such of his issue as shall then be living, per stirpes, or, if there be none, to those persons who would be the heirs at law of Husband, if Husband had then died intestate a resident of State.

Until the death of the survivor of the Grantors, in each calendar year in which one or more contributions are made to Trust 2, each then living child of the Grantors (other than any child of the Grantors who may then be a trustee) shall have the right, in her or his sole discretion, to make withdrawals from the principal of Trust 2 with the following provisions. The aggregate amount which any child of the Grantor may withdraw in any one calendar year shall not exceed $20,000. Withdrawals shall be made by written request. If the person entitled to make a withdrawal does not exercise such right in full on or before the last date on which such withdrawal is permitted, the unused portion attributable to that year shall lapse in an amount equal to the lesser of (a) such unused portion attributable to that year, or (b) the greater of $5,000 or 5 percent of such child's pro rata share of Trust 2 determined as if the Grantors had then died.

Trust 2 provides that, anything in Trust 2 to the contrary notwithstanding, any trust hereunder shall terminate on the expiration of 21 years less one day after the death of the last survivor of the group consisting of the Grantors, Mother, Brother, and the issue of the Grantors living on the date of Trust 2 and upon such termination the trustees shall distribute the then remaining principal to the then living issue of the Grantors who may then be entitled to receive or who may receive the income therefrom , per stirpes.

On Date 2, Husband and Wife (Settlors) created and funded Trust 3, an irrevocable trust. The trustee is Trustee A. Until the death of the survivor of Settlors, the trustee may pay any one or more of the members of a group consisting of Settlors' descendants living

from time to time during the continuance of the trust so much of the net income and principal of the trust, or may terminate the trust and distribute the principal thereof, and in such shares (equal or unequal), as the trustee shall, from time to time and in the discretion of the trustee, deems necessary or advisable for the health, support, maintenance and education of any descendants of the Settlors, having due regard for the best interests of the Settlors' descendants as a family group.

Upon the death of the survivor of the Settlors, Trust 3 will be divided and set apart for the Settlors' then living descendants, in equal shares, per stirpes. Each share so set apart for a child who has not attained age 40 will be held in a separate trust for the primary benefit of such child. The trustee shall pay to, or apply for the benefit of, such child so much of the net income as the trustee deems necessary for the health, support, maintenance, and education of the child. When the child reaches age 30, the trustee shall distribute all of the net income to such child and make the following distributions: (i) at age 30, the child will be distributed one-third of the principal of the trust; (ii) at age 35, the child will be distributed one-half of the principal of the trust; and at age 40, the child will be distributed the balance of the principal in the trust and the trust will terminate. If the child dies before attaining age 40, the trust principal will be distributed pursuant to the child's general power of appointment. To the extent, the child has not effectively exercised his or her power of appointment, such principal will be distributed, in equal shares, per stirpes, to such child's descendants who survive the child or, if there are none, to the descendants of the Settlors who survive the child.

During the continuance of Trust 3, the members consisting of the Settlors' descendants have the right to withdraw an amount from the principal of the trust having a value equal to the amount or amounts of principal, if any, which was transferred to the trust in any calendar year by the Settlors or any other person. No powerholder shall have the right to withdraw an amount in excess of $10,000 in the aggregate in any calendar year. However, if the Settlors are married during the calendar year, or either of the Settlors died during a calendar year, the maximum withdrawal is limited to $20,000. If any powerholder fails to exercise such right of withdrawal, that right of withdrawal shall lapse, but only to the extent of (a) the greater of $5,000 or five percent of the aggregate fair market value of the principal of the trust.

If a child dies prior to age 40, and if a taxable termination or taxable distribution (within the meaning of § 2612) will occur by reason of such child's death, the trustee shall distribute the appointive share of such child, as the child appoints. The testamentary general power of appointment granted to such child is exercisable by him or her alone and in all events and shall be exercisable in favor of his or her estate or in any other way.

Under Trust 3, any trust created under Trust 3 shall terminate on the later of (i) the 90th anniversary of the date of Trust 3 and (ii) the 21st anniversary of the death of the last to die of the Settlors, and the descendants of the Settlors' fathers who shall be living on the date of Trust 3, such trust shall terminate on such anniversary and the principal shall be distributed to the person(s) to whom trust income would be properly payable in the

absence of the exercise of the trustee's discretionary power over the distribution of income for whose benefit such trust shall have been created.

On Date 3, Husband created and funded a qualified personal residence trust (QPRT), Trust 4. The trustee is Trustee A. Trust 4 terminates on the earlier of (i) the 12-year anniversary of Date 3, or (ii) the death of Husband. Should Trust 4 terminate by reason of Husband's death and prior to the 15 year anniversary, the trustee shall distribute the trust in trust or outright to Child B. Should Trust 4 terminate by reason of the 15 year anniversary, if Husband is then living, the trust will be held by the trustee for the benefit of Child B. If Child B is deceased, the trust shall be held in trust for the benefit of Child A. If Child B has attained age 40 when Trust 4 terminates, then the trust will be distributed outright to Child B. Prior to age 40, until a beneficiary attains age 30, the trustee shall pay to or expend for the benefit of the beneficiary so much of the income and principal of the trust as the trustee deems necessary for the beneficiary's health, education, maintenance, or support needs. When the beneficiary attains age 30, the trustee shall distribute outright to the beneficiary one-third of the then remaining balance of the beneficiary's trust, shall commence to distribute all income to the beneficiary and shall have the discretion to distribute principal for the beneficiary's and his or her issue's health, education, maintenance, or support needs. When the beneficiary attains age 35, the trustee shall distribute outright to the beneficiary one-half of the then remaining balance of the beneficiary's trust, and when the beneficiary attains age 40, the trustee shall liquidate the beneficiary's trust and distribute the remaining balance outright to the beneficiary.

Under Trust 4, should a beneficiary die prior to receiving his or her entire trust, the then remaining balance of his or her trust shall be divided into shares for his or her then surviving issue, per stirpes; but if none, then for the beneficiary's then surviving siblings or for the issue of a predeceased sibling, per stirpes; but if none, then for the Grantor's then surviving issue, per stirpes.

Also, on Date 3, Wife created and funded a qualified personal residence trust, Trust 5. The provisions of Trust 5 are similar to those of Trust 4, except the beneficiary of Trust 5 is Child A. The trustee is Trustee A.

Husband and Wife are alive. The current beneficiaries of the trusts are Child A and Child B. Child A and Child B are minors represented by Court-approved Guardian Ad Litem. The trustees of Trusts 2 through 5 propose to consolidate Trusts 2 through Trust 5 to form a new trust, Trust 1, an irrevocable trust, to better serve the interests of Child A and B and to reduce administrative costs. The law of State governs Trusts 2 through 5 and Trust 1. A trust can be modified if it is in the best interests of the beneficiaries. Citation 1. A modification can be in the form of the creation of a new trust if the settlors and the beneficiaries all consent. Citation 2. Court approved the proposed Trust 1 on Date 1. Under the proposal, the assets of Trusts 2 and 3 will immediately transfer to Trust 1, while the assets of Trusts 4 and 5 will transfer upon the termination of the respective QPRT term. The trustees of Trust 1 are Trustee A and Trustee B.

The beneficiaries of Trust 1 are Child A and his issue and Child B and her issue. Under Trust 1, until the death of the survivor of the Grantors, the trustee shall distribute only so much of the net income and principal as the trustee, in its reasonable discretion, deems advisable for the proper health, education, maintenance, and support of the beneficiaries, collectively or individually. No income or principal may be payable to a beneficiary if it relieves a legal obligation of support of a beneficiary, of the trustee or the Settlors.

Upon the death of the last survivor of Grantors, the portions of the trust to which GST exemption was or can be allocated, which bears to either or both of Grantors an inclusion ratio of zero, and which will not be considered part of the estate of Grantors' child, will be divided into one equal share for each then living child of Grantors and one equal share for the issue, collectively, of each then deceased child of Grantors (the GST Exempt portions). The remaining portions of the trust (the nonGST Exempt portions) will be divided into equal shares also. Under Trust 1, in the event, a child predeceases Grantors leaving no surviving issue, such deceased child's share will be added to the other shares. If a child of the Grantors has predeceased the survivor of the Grantors, and the youngest of the deceased child's living children has attained age 27, the collective share for that child's issue shall be further divided into subshares that shall be held and administered as separate trusts for such child's issue on a per stirpes basis. If a child of the Grantors has predeceased the survivor of the Grantors and the youngest of the deceased child's living children has not yet attained age 27, the collective share for that child's issue shall be administered as one "pot" trust.

Until the termination and liquidation of a separate trust, and unless otherwise appointed by a beneficiary, the trustee will distribute so much of the income and principal of each separate trust, as is necessary for the health, education, maintenance, and support (or as the Independent Trustee determines to be in the Best Interests) of the issue of that beneficiary and for the health, education, maintenance, and support (or as the Independent Trustee determines to be in the Best Interests) of the issue of that beneficiary.

Upon the death of the beneficiary, the principal will be divided into subshares to be held as separate trusts for the issue of the deceased beneficiary on a per stirpes basis. Upon the termination of a separate trust and unless otherwise appointed by that beneficiary, the trustee shall distribute principal from each separate trust for the proper health, education, maintenance, and support (or as the Independent Trustee determines to be in the Best Interests) of the beneficiary for whom the trust was established, and for the proper health, education, maintenance, and support (or as the Independent Trustee determines to be in the Best Interests) of the issue of that beneficiary. Upon the death of a beneficiary, the principal shall be divided into subshares that shall be held and administered as separate trusts for the issue of that deceased beneficiary on a per stirpes basis. Notwithstanding the preceding sentence, if a child of the Grantor dies and his or her youngest living child has not yet reached age 27, until that time, the child's trust shall continue to be administered for the benefit of the child's issue as a "pot" trust.

Subject to the possible exercise of a beneficiary's power of appointment, the trusts established under Trust 1 will terminate in X years after the creation of Trust 1 or pursuant to State Statute rules against perpetuities and the possible exercise of a beneficiary's power of appointment.

Each beneficiary is granted a noncumulative right to withdraw his or her pro rata share of any additions made to the trust, within the time periods described in the trust and upon giving written notice. These withdrawals rights apply to contributed to the shares in the trust which are attributable to the assets transferred from Trusts 2 and 3. The amount subject to withdrawal by any beneficiary during any calendar year shall not exceed the lesser of (1) the amount deposited with the trustee by a donor, or (2) the annual exclusion amount provided for under § 2503(b), unless the contributor is married at the time of the gift, in which case the beneficiary may withdraw an aggregate amount not to exceed twice the annual exclusion reduced by any contributions made by the contributor's spouse during that year.

Under Trust 1, a beneficiary who has attained age 45 or has died is granted a power of appointment to be exercised by will or written directive. With respect to a trust that is wholly exempt from GST tax, the beneficiary may not appoint such exempt assets to him or herself, his or her creditors, his or her estate, or creditors of his or her estate. With respect to a trust that is not wholly exempt from GST tax, the beneficiary may also appoint to the creditors of his or her estate.

Upon initial funding, Trust 1 will be maintained as a single trust until divided pursuant to the terms of the trust. Trust 1 may be divided into separate shares if the trustee deems it desirable to maintain a share with a chapter 13 inclusion ratio of zero. Notwithstanding the foregoing, any assets transferred from Trust 4 will be held as a separate share for the benefit of Child B and her issue and any assets transferred from Trust 5 will be held as a separate share for the benefit of Child A and his issue.

It is represented that no GST exemption has been allocated directly or automatically to Trusts 2 through 5 and the trusts were created after September 25, 1985.

The following rulings have been requested:

1. The consolidation of Trusts 2 through 5 into Trust 1 will not cause the Grantors, Child A, or Child B to have made a taxable gift.

2. The consolidation of Trusts 2 through 5 into Trust 1 will not cause the assets of Trust 1 to be included in the gross estate of the Grantors, Child A, or Child B.

3. For purposes of chapter 13, the Grantors are the transferors of the assets transferred from Trusts 2 and 3 to Trust 1; Husband is the transferor of the assets transferred from Trust 4 to Trust 1, and Wife is the transferor of the assets transferred from Trust 5 to Trust 1.

Ruling #1

Section 2501 imposes a tax on the transfer of by gift during such calendar year by any individual. Section 2511 provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 2512(a) provides that, if a gift is made is, the value thereof at the date of the gift shall be considered the amount of the gift. Section 2512(b) provides that where is transferred for less than adequate and full consideration in money or money's worth, then the amount by which the value of the exceeded the value of the consideration is deemed to be a gift, and is included in computing the amount of gifts made during the calendar year.

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 by the individual possessing such power.

Section 2514(c) provides that for purposes of this section, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate, except if the power is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor.

Section 2514(e) provides that the lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power is considered a release of such power, but only to the extent such lapse exceeds in value the greater of $5,000 or 5 percent of the aggregate value of the subject to the power.

In the present case, the consolidation of Trusts 2 through 5 into Trust 1 will not constitute a transfer of by Child A or Child B for gift tax purposes. Child A and Child B will have substantially similar beneficial interests after the consolidation as they had prior to the transfer to Trust 1. The consolidation will not cause Child A or Child B to release their general powers of appointment to withdraw from Trust 2 and Trust 3. Further, the Grantors are not making a transfer of Trusts 2 through 5 assets to Trust 1 for gift tax purposes. Therefore, based upon the facts provided and the representations made, we conclude that the consolidation of Trusts 2 through 5 into Trust 1 will not result in a taxable gift by the Grantors, Child A, or Child B.

Ruling #2

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 value of the gross estate includes the value of all to the extent of the interest there of the decedent at the time of his death.

Section 2035(a) provides that (1) if the decedent transferred an interest in or relinquished a power with respect to any , during the 3-year period ending on the date of the decedent's death, and (2) the value of the (or interest therein) would have been included in the decedent’s gross estate under § 2036, 2037, 2038, or 2042 if the transferred interest or power had been retained by the decedent on the date of death, then the value of the gross estate includes the value of any (or interest therein) that would have been so included.

Section 2036(a) provides that the value of the gross estate shall include the value of all 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, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period that does not in fact end before his death, (1) the possession or enjoyment of, or the right to the income from, the , or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the or the income from the .

Section 2037(a) provides that the value of the gross estate includes the value of all 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, if (1) possession or enjoyment of the can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such .

Section 2038(a)(1) provides that the value of the gross estate includes the value of all to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fine sale for 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, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death.

In order for §§ 2035 through 2038 to apply, the decedent must have made a transfer of or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred. The initial transfer of assets to Trusts 2 through 5 was made by the Grantors. The consolidation of Trusts 2 through 5 into Trust 1 does not change this result. Further, the Grantors have not retained any interest in Trusts 2 through 5 and will not retain any interest in Trust 1 as a result of the consolidation. Accordingly, based upon the facts provided and the representations made, we conclude that the assets of Trust 1 are not includible in the Grantors’ gross estates under §§ 2035 through 2038. Child A and Child B will not have made any transfer of assets from Trusts 2 through 5 pursuant to the consolidation. Accordingly, based upon the facts provided and

the representations made, we conclude that the assets of Trust 1 are not includible in Child A or Child B's gross estates under §§ 2035 through 2038.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of any 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 disposition which is of such a nature that if it were a transfer of owned by the decedent, such would be includible in the decedent's gross estate under §§ 2035 to 2038.

Section 2041(b)(1) provides that for purposes of § 2041(a), 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, except if such power is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent.

Section 2041(b)(2) provides that the lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power, shall be considered a release of such power, but only to the extent such lapse exceeds the greater of $5,000 or 5 percent of the aggregate value of the assets subject to the power.

The consolidation of Trusts 2 through 5 into Trust 1 does not result in the release of any general powers of appointment granted to Child A and Child B. Under Trust 1, Child A and Child B's powers to withdraw from the assets transferred into Trust 1 from Trusts 2 and 3 lapse only to the extent of $5,000 or 5 percent of the aggregate value of the assets subject to the power. Under § 2042(b)(2), the lapse of such a power by Child A or Child B will not be considered the release of a general power of appointment. Child A and Child B will retain other powers granted to them in Trusts 2 and 3. Further, under Trust 1, Child A and Child B are granted intervivos and testamentary general powers of appointment exercisable under certain circumstances. These powers may cause subject to these powers to be includible in Child A's or Child B's gross estate under § 2041. Therefore, based upon the facts provided and the representations made, we conclude that the consolidation of Trusts 2 through 5 into Trust 1 will not cause Trust 1 assets to be included in the gross estate of Child A or Child B under § 2041, except to the extent the general powers of appointment retained by Child A and Child B from Trusts 2 and 3 and the general powers of appointment granted to Child A and Child B in Trust 1 would cause the assets of Trust 1 to be includible in Child A or Child B's gross estate under § 2041.

Ruling # 3

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of tax imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2641(a)(1) provides that the "applicable rate" is the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that the inclusion ratio with respect to any transferred in a generation-skipping transfer is the excess (if any) of one over the “applicable fraction” determined for the trust from which the transfer is made.

Section 2642(a)(2) provides that the applicable fraction is a fraction the numerator of which is the amount of GST exemption allocated to the trust and the denominator of which is the value of the transferred to the trust, reduced by the sum of the federal estate tax or state death tax actually recovered from the trust attributable to such and any charitable deduction allowed under § 2055 or 2522 with respect to such.

Section 2631(a), provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption which may be allocated by such individual (or his executor) to any with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his GST exemption under § 2631)(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual’s estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(ii)(A)(1) of the Generation-Skipping Transfer Tax Regulations provides that except as provided in paragraph (d)(1) of this section, an allocation to a trust made on a Form 709 filed after the due date for reporting a transfer to the trust (a late allocation) is effective on the date the Form 709 is filed and is deemed to precede in point of time any taxable event occurring on such date.

Section 2632(e)(1)(B) provides that any portion of an individual’s GST exemption which has not been allocated within the time prescribed by § 2632(a) will be deemed to be allocated to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual’s death.

Section 26.2632-1(c)(2)(i) provides that an ETIP is the period during which, should death occur, the value of transferred would be includible (other than by reason of § 2035) in the gross estate of the transferor or the spouse of the transferor. An ETIP terminates on the first to occur of the death of the transferor or the time at which no portion of the is includible in the transferor’s gross estate (other than by reason of § 2035) or, in the case of an individual who is a transferor solely by reason of an election under § 2513, the time at which no portion would be includible in the gross estate of the individual’s spouse (other than by reason of § 2035); the time of a GST, but only with respect to the involved in the GST.

Section 2642(f)(1) provides that except as provided in regulations, for purposes of determining the inclusion ratio, if an individual makes an intervivos transfer of , and the value of such would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such shall not be made before the close of the estate tax inclusion period (and the value of such shall be determined under § 2642(f)(2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

Section 2642(f)(3) provides that for purposes of this subsection, the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of the date on which there is a generation-skipping transfer with respect to such property or the date of the death of the transferor.

Section 2652(a)(1) provides that for purposes of chapter 13, the term “transferor” means in the case of any subject to the tax imposed by chapter 11, the decedent, and in the case of any subject to the tax imposed by chapter 12, the donor.

Section 26.2652-1(a)(1) provides that the individual with respect to whom was most recently subject to federal estate or gift tax is the transferor of that for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the federal estate or gift tax applies.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

Section 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor’s spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2654(b)(1) and (2) provide that for purposes of chapter 13, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts and substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

In the present case, on Dates 1 and 2, Husband and Wife transferred assets into Trusts 2 and Trust 3. Trusts 2 and 3 are irrevocable trusts and were created prior to December 31, 2000. Accordingly, the deemed allocation rules for lifetime transfers to trusts do not apply. Husband and Wife did not allocate any of their GST exemption to the portion of the trusts attributable to his or her transfer to those trusts. The consolidation of Trusts 2 and 3 into Trust 1 will not subject the assets transferred to Trust 1 from Trusts 2 and 3 to federal estate or gift tax. The Grantors are the individuals with respect to whom the assets transferred from Trusts 2 and 3 to Trust 1 were most recently subject to federal gift tax. Accordingly, based upon the facts provided and representations made, we conclude that, for purposes of chapter 13, the Grantors are the transferors of the assets transferred from Trusts 2 and 3 to Trusts 1.

On Dates 1 and 2, Husband transferred assets to Trusts 4 and Wife transferred assets to Trust 5. Assuming Husband and Wife survive the terms of Trust 4 and 5, respectively, the assets of those trusts will be transferred to Trust 1. The consolidation of Trusts 4 and 5 into Trust 1 at the end of the QPRT term of each trust (with Husband and Wife surviving the terms) will not subject the assets transferred to Trust 1 from Trusts 4 and 5 to federal estate or gift tax. Subsequent to the consolidation, Trust 4 and Trust 5 will continue to be

treated as separate trusts for purposes of § 2654(b). The Grantors are the individuals with respect to whom the assets transferred from Trusts 4 and 5 to Trust 1 were most recently subject to federal gift tax. Accordingly, based upon the facts provided and the representations made, we conclude that, for purposes of chapter 13, Husband is the transferor of the assets of Trust 4 to Trust 1 and Wife is the transferor of the assets of Trust 5 to Trust 1.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statements executed by the appropriate parties. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

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

In accordance with the power of attorney on file with this office a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

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

Enclosure:
Copy for section 6110 purposes