Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-129484-10

Date:
December 15, 2010

X =

A =

Trust =

D1 =

State =

Dear :

This letter responds to the letter dated April 5, 2010, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under the Internal Revenue Code.

FACTS

The information submitted states that X is disabled and eligible to receive public benefits. X's father, A, died D1. A owned two individual retirement accounts (IRAs) of which X and X's siblings are the designated beneficiaries. X proposes to transfer X's share of the IRAs to a newly established IRA benefitting Trust and the beneficiaries thereof.

Trust is intended to be a special needs trust. The terms of Trust provide that X is the sole beneficiary of Trust during X's lifetime. The trustee shall apply so much of the net income of Trust for the use of X as the trustee in its sole discretion shall determine is beneficial to X taking into consideration the best interest and welfare of X. If the income from Trust, together with any other income and resources possessed by X, including all governmental benefits, is insufficient to provide for the benefit of X, in the sole opinion of the trustee of Trust, the trustee is authorized to invade the principal for X's benefit. In general, however, the trustee may not invade the principal if such act will serve to deny, discontinue, reduce, or eliminate any government entitlement or payment which X would otherwise receive. The trustee shall accumulate and add to principal any net income not so paid or applied. Upon X's death, any remaining principal and undistributed income of Trust shall be distributed to State as reimbursement for assistance provided during X's lifetime. After reimbursement to the State, all remaining principal and undistributed income will be distributed to X's issue or, if there are no issue, to X's siblings, then to their issue by representation.

LAW AND ANALYSIS

Section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term “transfer” includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to

the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(a) of the Income Tax Regulations provides that if a right described in § 691(a)(1) is disposed of by gift, the fair market value of the right at the time of the gift must be included in the gross income of the donor.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under § 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 677(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Rev. Rul. 85-13, 1985-1 C.B. 184, concludes that if a grantor is treated as the owner of a trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes. A grantor's receipt of the corpus of a trust in exchange for an unsecured promissory note was treated as an unsecured borrowing of the trust corpus which caused the grantor to be treated as the owner of the trust under § 675(3). The transfer of the trust assets in exchange for the note was not recognized as a sale for federal income purposes.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that Trust will be treated as owned by X under §§ 671 and 677(a). Therefore, assuming the transfer of X's share of the IRAs to the Trust is not a gift by X, such transfer will not be a sale or disposition for federal income tax purposes or a transfer for purposes of § 691(a)(2).

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion under § 401(a)(9).

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Faith P. Colson
Faith P. Colson
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: