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:01
PLR-110269-14

Date:
October 10, 2014

Legend

Date =

Grantor =

Trust =

Child 1 =

Child 2 =

Child 3 =

Child 4 =

Individual 1 =

Individual 2 =

Individual 3 =

State =

Co-Trustees =

Guardian 1 =

Guardian 2 =

Dear :

This responds to a letter dated March 6, 2014, and subsequent correspondence, requesting rulings under §§ 671, 2041, 2501, and 2514 of the Internal Revenue Code.

Facts

The information and representations submitted state that on Date, Grantor created Trust, an irrevocable trust, for the benefit of himself, his issue, his spouse (Spouse), Individual 1, Individual 2, and Individual 3. Grantor will transfer property to Trust. The Trust agreement refers to Grantor's issue, Individual 1, Individual 2, and Individual 3 as "Beneficiaries." Trust is sited in State and, pursuant to the Trust agreement, is governed by the laws of State.

Trust provides that, during Grantor's lifetime, Co-Trustees must distribute such amounts of net income and principal as directed by the Power of Appointment Committee ("Committee") and/or Grantor as follows:

(1) At any time, the Co-Trustees, pursuant to the direction of the majority of the Committee members, with the written consent of Grantor, shall distribute to Grantor or Beneficiaries such amounts of the net income or principal as directed by Committee (Grantor's Consent Power);

(2) At any time, Co-Trustees pursuant to the direction of all of the Committee members other than the Grantor, shall distribute to Grantor or Beneficiaries such amounts of the net income or principal as directed by the Committee (Unanimous Consent Power); and

(3) Grantor has the power in a nonfiduciary capacity, at any time, to appoint to any one or more of Beneficiaries such amounts of the principal (including the whole thereof) as Grantor deems advisable to provide for such Beneficiary's health maintenance, support and education (Grantor's Sole Power).

Further, upon Grantor's death, the remaining balance of Trust shall be distributed to such person or persons or entity or entities, other than Grantor, his estate, his creditors, or the creditors of his estate, as Grantor may appoint by will (Grantor's Testamentary Power of Appointment). In default of the exercise of this limited power of appointment, the balance of Trust will be divided into as many equal parts as are necessary to satisfy certain dispositions either outright or in trust for Grantor's then living issue, Individual 1, Individual 2, and Individual 3.

Trust, provides that Committee may direct that distributions be made equally, or unequally, and to, or for the benefit of, any one or more of Beneficiaries to the exclusion of others. Any net income not distributed by the Co-Trustees will be accumulated and added to principal. The members of the Committee serve and act in a non-fiduciary capacity. Committee is initially composed of Grantor, Child 1, Child 2, Individual 1, Individual 2, Guardian 1, and Guardian 2. If, at any time, Committee consists of at least three or more members other than Grantor, all the members of Committee, including Grantor, may by unanimous vote add one or more members to Committee provided that such members are Beneficiaries. If at any time Committee does not include at least one member other than Grantor Committee shall immediately cease to exist. In any event, Committee shall cease to exist upon Grantor's death.

You requested the following rulings:

1. So long as the Power of Appointment Committee is serving, no portion of the items of income, deductions, and credits against tax of Trust shall be included in computing under § 671 the taxable income, deductions, and credits of Grantor or any members of the Power of Appointment Committee;

2. The contribution of property to Trust by Grantor will not be a completed gift for federal gift tax purposes;

3. Any distribution of property by Committee from Trust to Grantor will not be a completed gift, subject to federal gift tax, by any member of Committee;

4. Any distribution, of property by Committee from Trust to any Beneficiary, other than Grantor, will not be a completed gift, subject to federal gift tax, by any member of Committee, other than Grantor; and

5. Committee members do not possess a general power of appointment within the meaning of § 2041 and, accordingly, Trust will not be includible in any Committee member's gross estate under § 2041.

Law and Analysis

RULING 1

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 672(a) provides, for purposes of subpart E, the term "adverse party" means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust.

Sections 673 through 677 specify the circumstances under which the grantor is treated as the owner of a portion of a trust.

Section 673(a) provides that the grantor shall be treated as the owner of any portion of a trust in which the grantor has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds five (5) percent of the value of such portion.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b)(3) provides that § 674(a) shall not apply to a power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if, under the terms of the trust agreement or circumstances

attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiary of the trust.

Section 676(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 any other provision of part I, subchapter J, chapter 1, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Section 677(a) provides, in general, 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.

Section 678(a)(1) provides a general rule that a person other than a grantor shall be treated as the owner of any portion of a trust with respect to which such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself.

Based solely on the facts and representations submitted, we conclude an examination of Trust reveals none of the circumstances that would cause Grantor or any other person to be treated as the owner of any portion of Trust under §§ 673, 674, 676, 677, or 678.

We further conclude that an examination of Trust reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of Grantor or any other person under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor or any other person will be treated as the owner of any portion of Trust under § 675. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.

RULINGS 2 and 3

Section 2501(a)(1) provides for the imposition of a gift tax on the transfer of property by gift. Section 2511(a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or person, tangible or intangible.

Section 25.2511-2(b) of the Gift Tax Regulations provides that a gift is complete as to any property or part thereof or interest therein, of which the donor has so parted

with dominion and control as to leave the donor with no power to change the disposition of the property, whether for the donor's own benefit, or for the benefit of another. But if upon a transfer or property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

Section 25.2511-2(b) provides an example of where the donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among the donor's descendants. The regulation concludes that no portion of the transfer is a completed gift. However, if the donor had not retained testamentary power of appointment, but had instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift.

Section 25.2511-2(c) provides that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title in himself or herself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Under § 25.2511-2(e), a donor is considered as himself having a power if it is exercisable by the donor in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom.

Section 25.2511-2(f) provides that the relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by death of the donor, is regarded as the event which completes the gift and causes the gift tax to apply.

Section 25.2511-2(g) provides that if a donor transfers property to himself as trustee (or to himself and some other person, not possessing a substantial adverse interest, as trustees), and retains no beneficial interest in the trust property and no power over it except fiduciary powers, the exercise or nonexercise of which is limited by a fixed or ascertainable standard, to change the beneficiaries of the transferred property, the donor has made a completed gift and the entire value of the transferred property is subject to the gift tax.

Section 25.2511-2(e) does not define "substantial adverse interest." Section 25.2514-3(b)(2) provides, in part, that a taker in default of appointment under a power has an interest that is adverse to an exercise of the power. Section 25.2514-3(b)(2) also provides that a co-holder of a power is considered as having an adverse interest

where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate.

In *Estate of Sanford v. Commissione*r, 308 U.S. 39 (1939), the taxpayer created a trust for the benefit of named beneficiaries and reserved the power to revoke the trust, in whole or in part, and to designate new beneficiaries other than himself. Six years later, in 1919, the taxpayer relinquished the power to revoke the trust, but retained the right to change the beneficiaries. In 1924, the taxpayer relinquished the right to change the beneficiaries. The Court stated that the taxpayer's gift is not complete. For purposes of the gift tax, when the donor has reserved the power to determine those others who would ultimately receive the property. Accordingly, the Court held that the taxpayer's gift was complete in 1924, when he relinquished his right to change the beneficiaries of the trust. The retention of a power to change the beneficial interests in a trust causes the transfer to the trust to be incomplete for gift tax purposes, even though the power may be defeated by the actions of third parties *Goldstein v. Commissioner*, 37 T.C. 897 (1962). *See also Estate of Goelet v. Commissioner*, 51 T.C. 352 (1968).

In this case, Grantor retained the Grantor's Consent Power over the income and principal of Trust. Under § 25.2511-2(e), a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. The Committee members are not takers in default for purposes of § 25.2514-3(b)(2). They are merely co-holders of the power. The Committee ceases to exist upon the death of Grantor. Under § 25.2514-3(b)(2), a co-holder of a power is only considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. In this case, Committee ceases to exist upon Grantor's death. Accordingly, the Committee members do not have interests adverse to Grantor under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). Therefore, Grantor is considered as possessing the power to distribute income and principal to any beneficiary himself because he retained the Grantor's Consent Power. The retention of this power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Grantor also retained the Grantor's Sole Power over the principal of Trust. Under § 25.2511-2(c), a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries. In this case, the Grantor's Sole Power gives Grantor the power to change the interests of the beneficiaries. Accordingly, the retention of the Grantor's Sole Power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Further, Grantor retained Grantor's Testamentary Power to appoint the property in Trust to any person or persons or entity or entities, other than Grantor's estate,

Grantor's creditors, or the creditors of Grantor's estate. Under § 25.2511-2(b)(2), the retention of a testamentary power to appoint the remainder of a trust is considered a retention of dominion and control over the remainder. Accordingly, the retention of this power causes the transfer of property to Trust to be incomplete with respect to the remainder in Trust for federal tax purposes.

Finally, Committee possesses the Unanimous Member Power over income and principal. This power is not a condition precedent to Grantor's powers. Grantor's powers over the income and principal are presently exercisable and not subject to a condition precedent. Grantor retains dominion and control over the income and principal of Trust until the Committee members exercise their Unanimous Member Power. Accordingly, this power does not cause the transfer of property to be complete for federal gift tax purposes. *See Goldstein v. Commissioner*, 37 T.C. 897 (1962); *Estate of Goelet v. Commissioner*, 51 T,C. 352 (1968),

Accordingly, based on the facts submitted and the representations made, we conclude that the contribution of property to Trust by Grantor is not a completed gift subject to federal gift tax. Any distribution from Trust to Grantor is merely a return of Grantor's property. Therefore, we conclude that any distribution of property by the Committee from Trust to Grantor will not be a completed gift subject to federal gift tax, by any member of the Committee. Further, upon Grantor's death, the fair market value of the property in Trust is includible in Grantor's gross estate for federal estate tax purposes.

RULINGS 4 and 5

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 (possessor), the possessor's estate, the possessor's creditors, or the creditors of the individual's estate.

Section 25.2514-1(c)(1) provides, in part, that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the possessor or his creditors, or the possessor's estate or the creditors of the estate.

Section 2514(c)(3)(A) provides that, in the case of a power of appointment created after October 21, 1942, if the power is exercisable by the possessor only in conjunction with the creator of the power, such power is not deemed a general power of appointment.

Section 2514(c)(3)(B) provides that, in the case of a power of appointment created after October 21, 1942, if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest in the property subject to the power, which is adverse to the exercise of the power in favor of the possessor, such power shall not be deemed a general power of appointment. For purposes of § 2514(c)(3)(B), a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power.

Section 25.2514-3(b)(2) provides, in part, that a co-holder of a power of appointment has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a co-holder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditor, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y.

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 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 by a disposition which is of such nature that if it were a transfer or property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Under § 2041(b)(1), the term "general power of appointment" is defined, in relevant part, to mean a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 2041(b)(1)(C)(ii) provides, however, that in the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person, if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to the exercise of the power in favor of the decedent – such power shall not be deemed a general power of appointment. For purposes of § 2041(b)(1)(C)(ii), a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power)

which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

Section 20.2041-3(c)(2) of the Estate Tax Regulations provides, in part, that a co-holder of a power of appointment has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a co-holder of a power is considered as having an adverse interest where he may possess the power after the decedent's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y.

The powers held by the Committee members under the Grantor's Consent Power are powers that are exercisable only in conjunction with the creator, Grantor. Accordingly, under §§ 2514(b) and 2041(a)(2), the Committee members do not possess general powers of appointment by virtue of possessing this power. Further, the powers held by the Committee members under the Unanimous Member Powers are not general powers of appointment for purposes of §§ 2514(b) and 2041(a)(2). As in the examples in §§ 25.2514-3(b)(2) and 20.2041-3(c)(2), the Committee members have substantial adverse interests in the property subject to this power. Accordingly, any distribution made from Trust to a beneficiary, other than Grantor, pursuant to the exercise of these powers, the Grantor's Consent Power and the Unanimous Member Powers, are not gifts by the Committee members. Instead, such distributions are gifts by Grantor.

Based upon the facts submitted and representations made, we conclude that any distribution of property by the Committee from Trust to any beneficiary of Trust, other than Grantor, will not be a completed gift subject to federal gift tax, by any member of the Committee. Further, we conclude that any distribution of property from Trust to a beneficiary other than Grantor will be a completed gift by Grantor. Finally, we conclude that the powers held by the Committee members are not general powers of appointment for purposes of § 2041(a)(2) and, accordingly, the possession of these powers by the Committee members will not cause Trust property to be includible in any Committee member's gross estate under § 2041(a)(2).

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

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. In accordance with the power of attorney on file with this office, copies of this letter are being sent to the taxpayer's authorized representative.

Sincerely,

Joy C. Spies
Joy C. Spies
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this Letter.
Copy for § 6110 purposes

cc: