Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-103339-19

Date:
August 26, 2019

Legend

Date =

Grantor =

Trust =

Nephew =

Niece 1 =

Niece 2 =

Friend =

Guardian =

Trustee =

State 1 =

State 2 =

Power of Appointment Committee =

Dear :

This responds to a letter dated February 21, 2019, and subsequent correspondence, requesting rulings under the Internal Revenue Code.

Facts

The information submitted states that on Date, Grantor created Trust, an irrevocable trust, for the benefit of Grantor and the following class of beneficiaries: Nephew and his issue, Niece 1 and her issue, Niece 2 and her issue, and Friend (collectively, the Beneficiaries). A corporate trustee located in State 1 is Trustee of Trust. Trust is initially governed under the law of State 1 and Grantor resides in State 2. Trust is a United States person under § 7701(a)(30)(E) of the Internal Revenue Code.

Part III, Article THIRD of the Trust provides for the creation of a Power of Appointment Committee. The initial members of the Power of Appointment Committee are Grantor, Nephew, Niece 1, Guardian, and Friend. Guardian is acting on behalf of Niece 2, who is a minor. If at any time the Power of Appointment Committee includes three or more members, other than the Grantor, then all the members of the Power of Appointment Committee including the Grantor may by unanimous vote, at any time and from time to time, add one or more members to Power of Appointment Committee provided that such members are Beneficiaries (i.e., descendants of Nephew, Niece 1, or Niece 2) and, provided further that, if any one or more of them is a minor, the members of the Power of Appointment Committee shall by unanimous vote designate an individual to serve as guardian for such minor. Each member of the Power of Appointment Committee may resign without prior approval of any court or the consent of any person. If such a member resigns or fails or ceases to serve, then the position will remain vacant. The members of the Power of Appointment Committee shall not serve or act in a fiduciary capacity. Under Part III, Article FOURTH(d) and (g), under no circumstances shall Grantor or any of the Beneficiaries act as a guardian and upon the beneficiary attaining age eighteen years, his or her guardian shall cease to serve and the beneficiary shall serve as a member of the Power of Appointment Committee.

Part II, Article THIRD of the Trust provides that the Power of Appointment Committee shall cease to exist upon the first to occur of the date of the Grantor's death or the date on which the Power of Appointment Committee has fewer than two (2) members other than the Grantor.

Part I, Article FIRST(a)(1) and Part III, Article THIRD(f) of Trust provides that while the Power of Appointment Committee is in existence, then, until the Distribution Date (defined as the date of Grantor's death) at any time or times, Trustee shall distribute to the Beneficiaries and/or Grantor such amounts of net income and principal (including the whole thereof) as the Power of Appointment Committee appoints. While the Power of Appointment Committee is in existence, Trust shall make no distributions except as the Power of Appointment Committee appoints. Any appointment to one or more Beneficiaries and/or Grantor must be made in writing either:

(1) as executed by Grantor and by a majority of the Committee members (Grantor's Consent Power); or
(2) as executed by all then serving members of Committee (Unanimous Member Power).

In addition, any appointment to Grantor may also be made in writing, executed by any one member of the Committee who is also an Adverse Party (Adverse Party Power). Adverse Party is defined in Part II, Article FIRST(c) as having the meaning set forth in § 672(a) of the Internal Revenue Code.

The Power of Appointment Committee may appoint income or principal equally or unequally to or for the benefit of Grantor or any one or more of the Beneficiaries to the exclusion of others.

Part I, Article FIRST(b)(1) provides that if and only if the Power of Appointment Committee is in existence, Grantor shall have the power in a non-fiduciary capacity, at any time and from time to time, to appoint to any one or more of the Beneficiaries such amounts of the principal (including the whole thereof) as Grantor deems advisable to provide for the health, maintenance, support and education of the Beneficiaries (Grantor's First Sole Power).

Part I, Article FIRST(a)(2), (a)(3), and (b)(2) provide that if and only if the Power of Appointment Committee ceases to exist, then, until the Distribution Date:

(1) Trustee may, pursuant to a written instrument, at any time or times, distribute to the Beneficiaries such amounts of the net income or principal of Trust (including the whole thereof) as Trustee determines. In determining whether to make any distributions to the Beneficiaries, Trustee is required to take into consideration the distributee's own income and property and any other income or property which any individual provides or is obligated to provide;
(2) Trustee may, with and only with the consent of an Adverse Party, distribute to Grantor such amounts of the net income or principal of Trust (including the whole thereof) as Trustee determines;
(3) Grantor shall have the power in a non-fiduciary capacity, at any time and from time to time, to appoint such amounts of the net income or principal of Trust (including the whole thereof) to any one or more of the Grantor's Family, other than Grantor, Grantor's estate, Grantor's creditors or the creditors of Grantor's estate (Grantor's Second Sole Power). Grantor's Family is defined in Part II, Article FIRST(q) as the Grantor, the issue of the Grantor's grandparents, all Close Persons and all charities. A Close Person is defined in Part II, Article FIRST(j) as an individual determined by the Trustee to be a close personal, business or professional associate of the Grantor and each of the issue of any

such individual other than any such issue who is expressly excluded by the Trustee.

Additionally, under Part I, Article FIRST(a)(1) and (c)(1) the Power of Appointment Committee and Trustee have the power, until the Distribution Date, to appoint all or any portion of Trust to any one or more Qualified Trusts. Part II, Article FIRST(dd) defines a Qualified Trust as a trust that benefits one or more members of the Grantor's Family and complies with certain other technical requirements. The Power of Appointment Committee may exercise this power under the Grantor's Consent Power, the Unanimous Member Power, and the Adverse Party Power.

Under Part II, Article THIRD(a), no distribution by Trustee to a beneficiary and no distributions to a beneficiary pursuant to a power of appointment granted hereunder, shall discharge any individual's legal obligation to support the beneficiary.

Part II, Article EIGHTH(j)(2) provides that any power retained by Grantor shall be exercisable in a non-fiduciary capacity.

Part I, Article FIRST(e) provides that upon the death of the Grantor, Trustee shall distribute the remainder of the trust to or for the benefit of any person or entity or entities, other than the Grantor's estate, the Grantor's creditors, or the creditors of the Grantor's estate, as Grantor appoints by will. Part I, Article FIRST(f) provides that, in default of this appointment, ten percent of any undistributed property will be distributed in trust for Friend, if Friend is then serving on the Power of Appointment Committee, and the balance in equal shares in trust for Nephew and his issue, Niece 1 and her issue, and Niece 2 and her issue (Grantor's Testamentary Power).

You have requested the following rulings:

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

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

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

4. Any distribution of property by the Power of Appointment Committee from Trust to any beneficiary of Trust, other than to Grantor, will not be a completed gift subject to federal gift tax, by any member of the Power of Appointment Committee.

5. No member of the Power of Appointment Committee upon his or her death will include in his or her estate any property held in Trust because such member is deemed to have a general power of appointment within the meaning of § 2041 over property held in Trust.

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) provides that § 674(a) shall not apply to the powers described in § 674(b) regardless of whom held.

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.

Section 674(b)(5) provides that § 674(a) shall not apply to a power to distribute corpus to or for a beneficiary, provided that the power is limited by a reasonably definite standard.

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) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671-677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Section 679(a) provides that a United States person who directly or indirectly transfers property to a foreign trust shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of the trust.

Based solely on the facts and representations submitted and except as caveated below, we conclude an examination of Trust reveals none of the circumstances that would cause Grantor to be treated as the owner of any portion of Trust under §§ 673, 674, 676, 677, or 679 as long as Trust is a domestic trust and the Power of Appointment Committee remains in existence and serving. Because none of the members of Power of Appointment Committee have a power exercisable by himself to vest trust income or corpus in himself, none shall be treated as the owner of Trust under § 678(a).

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 under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor 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.

Lastly, no opinion is expressed or implied regarding the income tax consequences of any provision permitting the Trustee to distribute income or principal pursuant to the Power of Appointment Committee's exercise of the Adverse Party Power. Further, no opinion is expressed or implied regarding the income tax consequences of any other provision of Trust not referenced in this private letter ruling.

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 personal, tangible or intangible.

Section 25.2511-2(b) of the Gift Tax Regulations provides that a gift is complete as to any property with respect to 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 of 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, where the donor transfers property 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 a 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. 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 an 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.

Under § 25.2511-2(e), a donor is considered as possessing 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. 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(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. Commissioner*, 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. A's 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. Power of Appointment Committee members are not takers in default for purposes of § 25.2514-3(b)(2). They are merely co-holders of the power. 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, the Power of Appointment Committee ceases to exist upon Grantor's death. Accordingly, the Power of Appointment 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.

Grantor also retained Grantor's First Sole Power over the principal of Trust (held while the Power of Appointment Committee is in existence) and Grantor's Second Sole Power over the income and principal of Trust (held after the Power of Appointment Committee dissolves). 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 as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard. In this case, the Grantor's First and Second Sole Powers give Grantor the power to change the interests of the beneficiaries. Grantor's First and Second Sole Powers are non-fiduciary powers. Even though Grantor will relinquish Grantor's First Sole Power, Grantor reserves Grantor's Second Sole Power over a different class of appointees. Accordingly, the retention of Grantor's First and Second Sole Powers causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes when Grantor contributes property to Trust. The transfer will continue to be incomplete in the event that the Power of Appointment Committee dissolves prior to Grantor's death.

Further, Grantor retained Grantor's Testamentary Power to appoint the property in Trust to any persons, other than Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. Under § 25.2514-3(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, the Power of Appointment Committee members possess the Unanimous Member Power and the Adverse Party Power over income and principal. These powers are not conditions 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 Power of Appointment Committee members exercise their Unanimous Member Power or Adverse Party Power. Accordingly, the Unanimous Member Power and the Adverse Party Power do not cause the transfer of property to be complete with respect to the income and principal interests in Trust for federal gift tax purposes.

If the Power of Appointment Committee ceases to exist, the Trustee, in its fiduciary capacity, also has the power to distribute net income or principal to one or more Beneficiaries. The powers of the Trustee are not conditions precedent to the Grantor's powers. Grantor's Consent Power over income and principal and Grantor's First Sole Power over principal are presently exercisable and not subject to a condition precedent. Additionally, Grantor's Second Sole Power over income and principal is exercisable immediately after the Power of Appointment Committee ceases to exist and is not subject to a condition precedent. Accordingly, Grantor retains dominion and control over the principal of Trust until the Trustee exercises its power to appoint income or principal. Thus, the Trustee's power to distribute net income or principal does not cause the transfer of property to Trust to be complete for federal gift tax purposes. Accordingly, the retention of the Grantor's Consent Power, the Grantor's First Sole Power, and the Grantor's Second Sole Power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

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 Power of Appointment Committee from Trust to Grantor will not be a completed gift subject to federal gift tax, by any member of the Power of Appointment 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 possessor's estate.

Section 25.2514-1(c)(1) provides 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 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 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.

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 of 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, 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 Power of Appointment 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 Power of Appointment Committee members do not possess general powers of appointment by virtue of possessing this power. The powers held by the Power of Appointment Committee members under the Unanimous Member Power 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 Power of Appointment Committee members have substantial adverse interests in the property subject to this power.

The powers held by the Power of Appointment Committee members under the Adverse Party Power are not general powers of appointment for purposes of §§ 2514(b) and 2041(a)(2). Sections 2514(c) and 2041(b)(1) provide 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 possessor's estate. Under the terms of the Adverse Party Power, the power is only exercisable by someone who is an adverse party with respect to the distribution. The possessor of a power cannot be an adverse party with respect to a distribution to himself, his estate, his creditors or the creditors of his estate. Therefore, the Adverse Party Power can never be exercised in favor of the possessor, his estate, his creditors or the creditors of estate, and, as a result, is not a general power of appointment.

Accordingly, any distributions made from Trust to a beneficiary pursuant to the exercise of these powers (the Grantor's Consent Power, the Unanimous Member Powers and the Adverse Party Power) are not gifts by the Power of Appointment Committee members.

Based on the facts submitted and representations made, we conclude that any distribution of property by the Power of Appointment 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 Power of Appointment 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 Power of Appointment Committee are not general powers of appointment for purposes of § 2041(a)(2) and, accordingly, no member of the Power of Appointment Committee upon his or her death will include in his or her estate any property held in Trust because such member is deemed to have a general power of appointment within the meaning of § 2041 over property held in Trust.

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. Specifically, we express no opinion on the trust provisions permitting Trustee to distribute income or principal to trustees of other qualified trusts (decanting).

Sincerely,

Faith P. Colson
Faith P. Colson
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

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