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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-162068-02
Date:

October 10, 2003

Legend

- Grantor 1 =
- Trust 1 =

- Date 1 =
- Trustee 1 =
- Trustee 2 =
- Son =
- Brother =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Trust 2 =

- Trust 3 =

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Trust 4 =

Trust 5 =

Trust 6 =

Grantor 2 =

 Date 2 =

 Date 3 =

 Date 4 =

 Date 5 =

Grantor 3 =

 Father =

 Date 6 =

 Date 7 =

Granddaughter 1 =

 Date 8 =

Granddaughter 2 =

 Date 9 =

 Family X =

 Family Y =

Trust Company =

 State 1 =

 Date 10 =

Patriarch X =

Patriarch Y =

 Date 11 =

 Date 12 =

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Probate Court =

State 2 =

Trustee 3 =

Dear :

This letter responds to your letter, dated April 17, 2003, and prior correspondence requesting rulings under §§ 2036, 2038, 2041, and 2601 of the Internal Revenue Code.

Grantor 1 created Trust 1 on Date 1. Trustee 1 currently serves as the independent trustee and Trustee 2 serves as the family trustee of Trust 1.

Article 1 of the Trust 1 agreement provides that the initial trust property shall constitute a trust for the benefit of Son. Section 1.1(a) provides, in relevant part, that during Son's lifetime any part or even all of the net income and/or corpus of the trust may, at any time, in the sole discretion of the independent trustee of the trust, be distributed to or for the benefit of any one or more of the following permissible distributees: (i) Son, (ii) each lineal descendant of Son who is then living, including a descendant whose parents are living, and (iii) any trust for the primary benefit of any of the permissible distributees that is governed by an irrevocable and unamendable trust instrument executed prior to Date 1 (except any trust as to which Grantor 1 has any beneficial interest or any power that could affect beneficial enjoyment). When distributions are made to more than one person, the amounts or proportions received by each need not necessarily be equal and shall be in the sole discretion of the independent trustee.

Section 1.1(b) of the Trust 1 agreement provides that Son shall have the power to appoint any part or all of the trust assets to any one or more "permissible appointees." If Son is under the age of fifty, Son's appointment requires the written approval of the then independent trustee. The permissible appointees are Grantor 1's mother's lineal descendants (whether or not then living) and the spouses of the descendants. Son's power, however, is not exercisable to any extent for the direct or indirect financial benefit of Grantor 1, Son or either of their creditors, their estates, or their estates' creditors.

Section 3.1(c) of the Trust 1 agreement provides that the family trustee of each trust shall have the right to remove the independent trustee of the trust for any proper reason. Section 3.1(d) provides that the right to remove the family trustee of each trust (with or without cause) is held by the following persons: (1) Grantor 1, (2) Grantor 1's spouse, (3) Grantor 1's Brother, and (4) the then beneficiary or beneficiaries of the trust, acting by majority vote if there is more than one, each beneficiary being entitled to one vote, all in that order of preference.

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Section 3.2(b) of the Trust 1 agreement provides that successor independent trustees shall be appointed by the family trustee of the trust or, if there is no family trustee, the person having removal rights over the family trusteeship. Each independent trustee must be a properly independent person or bank as described in Section 3.4 of the Trust Technical Provisions. Section 3.2(c) provides that either Grantor 1 or Grantor 1's spouse may stipulate, that after the occurrence of any specified date or event, the independent trustee must be a bank or trust company.

Section 3.3 of the Trust 1 agreement provides that vacancies in the office of family trustee may be filled (by any person then at least age twenty-five) or left vacant, all as determined by the person(s) having removal rights over that family trusteeship. In the absence of or until an appointment is made, the independent trustee of the trust shall act alone as sole trustee of the trust.

Section 5.1(b) of the Trust 1 agreement provides that all other provisions to the contrary notwithstanding and unless earlier terminated, Trust 1 shall, in any and all events, terminate on the day prior to the expiration of twenty-one years after the death of the last survivor of the living persons whose names appear in the Trust 1 agreement (other than solely as trustees, witnesses, notaries, etc.) and those of their lineal descendants who are living on Date 1. On termination, the trustees shall pay over all of the net assets of Trust 1 to the primary beneficiary for whom distributions of the income of Trust 1 might then be properly made (or, if there is more than one beneficiary, then to the beneficiaries according to their respective apparent proportionate interests in Trust 1 as determined in the reasonable discretion of the trustees).

Date 1 is prior to September 25, 1985. Post-September 25, 1985 transfers were made to Trust 1 in Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6. With respect to those transfers, the trustees represent that each transfer qualified for the gift tax annual exclusion. The trustees further represent that, with respect to all transfers made to Trust 1 after March 31, 1988, a portion of the donor's (and the donor's spouse, when applicable) generation-skipping transfer tax exemption under § 2631 of the Internal Revenue Code was allocated in an amount sufficient to give Trust 1 an inclusion ratio of zero for generation-skipping transfer tax purposes. In addition, Grantor 1 exercised a non-general power of appointment over two trusts of which she was a beneficiary and appointed assets to Trust 1 in Year 1 and Year 2. The trustees represent that the trusts over which the powers were exercised were irrevocable prior to September 25, 1985.

Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 are all governed by the trust agreement executed by Grantor 1 and Grantor 2 on Date 2. The Date 2 trust agreement was amended by the initial trustees on Date 3, under Section 6.10 of the trust agreement granting the initial trustees a limited power of amendment. The provisions below reflect the Date 3 amendments.

Grantor 1 and Grantor 2 funded Trust 2 on Date 4 and Trust 3 on Date 5 for the benefit of Son. The trustees represent that a portion of each donor (and donor's spouse's) generation-skipping transfer tax exemption was allocated to the transfers to Trust 2 giving Trust 2 a zero inclusion ratio for generation-skipping transfer tax

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purposes. Trust 3 has an inclusion ratio of one for purposes of the generation-skipping transfer tax. Trustee 2 currently serves as the independent trustee and Trustee 1 serves as the family trustee of Trust 2 and Trust 3.

Trust 6, an exempt family trust for purposes of the generation-skipping transfer tax, is governed by Article 1 of the Date 2 trust agreement. Trust 6 was funded by a bequest from Grantor 3's will and is for the primary benefit of Father. Grantor 3 died on Date 6. The trustees represent that Grantor 3's generation-skipping transfer tax exemption was allocated to the transfer to Trust 6 and that Trust 6 has a zero inclusion ratio for generation-skipping transfer tax purposes. Trustee 2 currently serves as the independent trustee and Trustee 1 serves as the family trustee of Trust 6.

Article 1 of the Date 2 trust agreement provides that the initial trust property shall constitute the initial corpus of Trust 2, an exempt family trust, for purposes of the generation-skipping transfer tax, in Son's name. Section 1.1(a) of provides, with respect to Trust 2, that during Son's lifetime, any part or all of the trust's net income and/or principal may be distributed to (or for the primary benefit of) Son, any one or more of Son's descendants, any unremarried surviving spouse of any deceased descendant of Son, and/or any trust for the primary benefit of any such person, even a newly created trust. Any income that is not distributed shall be added to principal. To provide greater equality among Son's descendants, distributions made to a child of Son after the age of twenty-three (or before that age to be married, acquire a home, etc.) are to be treated as advances on that child's ultimate share of the trust (as are distributions to that child's children).

Section 1.1(b) of the Date 2 trust agreement provides that Son shall have the power to appoint any part or all of Trust 2's assets to anyone with the approval of the then independent trustee. Son's power shall not be used to benefit Son, his creditors, his estate, or its creditors.

Section 2.2 of the Date 2 trust agreement provides that the administrative provisions for Trust 3, a nonexempt family trust for the purposes of the generation-skipping transfer tax in the name of Son. During Son's life, Son will be Trust 3's primary beneficiary. The provisions of Trust 3 shall be identical to the provisions of the exempt family trust in the name of Son described in Article 1 with certain described exceptions.

Section 2.2(b) of the Date 2 trust agreement provides that if Son is survived by any descendant (or an unremarried qualified spouse of a descendant), Son shall have the power, but only with the written consent of the then independent trustee(s), to appoint, effective as of his death, to his probate estate, the greater of: (1) any assets contained in the trust that are includible in Son's gross estate or (2) the lesser of (A) all of the net assets of Trust 3 or (B) a fraction of the net assets having a value equal to: (I) three times the amount of the exemption equivalent of the federal estate tax unified credit or (II) if the primary beneficiary is survived by a qualified spouse, double the amount in (I).

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Grantor 1 and Grantor 2 funded Trust 4 on Date 7 for the primary benefit of Granddaughter 1 and funded Trust 5 on Date 8 for the primary benefit of Granddaughter 2. The trustees represent that all the gifts made to Trust 4 and Trust 5 qualified for the gift tax annual exclusion and for a zero generation-skipping transfer tax inclusion ratio under § 2642(c). Trustee 2 currently serves as the independent trustee and Trustee 1 serves as the family trustee of Trust 4 and Trust 5.

Section 2.8 of the Date 2 trust agreement provides that anyone may transfer property to the trustees of an “annual exclusion trust” for a grandchild of the person initially making the transfer (for this purpose “grandchild” means anyone who is a “skip person” as to the initial transferor).

Section 2.8(a) of the Date 2 trust agreement provides that during the remainder of a grandchild’s life, in the discretion of the independent trustee(s), any part or all of the trust’s net income and/or principal may be distributed to (or for the benefit of) the grandchild. At the end of each tax year, any income that is not distributed shall be added to principal.

Section 2.8(b) of the Date 2 trust agreement provides that with the approval of the independent trustee(s) of the trust, the grandchild shall have the power to appoint any part or all of the assets of the trust, as of his or her death to any one or more of the initial transferor’s descendants and/or their spouses, but the power shall not be used to benefit the grandchild, his or her creditors, his or her estate, or its creditors, nor to benefit any spouse except in a trust (limited to income plus principal invasions as are needed, liberally, for the spouse’s health and accustomed manner of living).

Section 2.8(c) of the Date 2 trust agreement provides that the grandchild shall have, with the approval of the then independent trustee, the power to appoint any part or all of the assets of the trust effective on his or her death to his or her probate estate.

Section 2.8(d) of the Date 2 trust agreement provides that upon the death of a grandchild, his or her trust shall terminate and all of the then remaining trust property not appointed under paragraphs (b) and (c) 3.2(f)(2), subject to an optional provision for the reimbursement of tax payments attributable to the inclusion of trust property in the beneficiary’s gross estate, shall be disposed of as provided in Section 2.3 (and in the incorporated technical provisions) as if the then remaining property of the terminating trust were the general power of appointment property of a nonexempt family trust standing in the name of the deceased grandchild.

The following provisions are applicable to all of the trusts governed by the Date 2 trust agreement.

Section 3.1 of the Date 2 trust agreement provides that the family trustee of each trust shall have the right to remove the independent trustee of that trust for any proper reason. The right to remove the family trustee of each trust (with or without cause) is held by the following person in the stated order of preference: (1) Grantor 1 and Grantor 2 acting together, or after the incapacity or death of either Grantor 1 or

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Grantor 2, the other acting alone (or their designee). (2) With regard to the trusts for the benefit of Son and members of his family the right to remove may be exercised by (a) Son (or his designee), (b) each of Son's descendants who are at least twenty-five years old (or his or her designee), but only as to any trust with respect to which that descendant (or a member of his or her family) is the beneficiary, or (c) Son's children who are at least twenty-one years old, acting by majority vote, or, if none, Son's descendants who are at least twenty-one years old, acting by majority vote. (3) As to each other trust the family trustee of which is not then subject to removal by anyone else, the right of removal may be exercised by the descendants of Grantor 1 and Grantor 2 who are at least twenty-one years old, or if none, Brother's descendants who are at least twenty-one years old, in either case acting by majority vote. Designees must be approved by the independent trustee of all trusts as to which the designator or a member of the designator's family is a beneficiary.

Section 3.2 of the Date 2 trust agreement provides that a second independent trustee (meeting the qualifications set forth in the technical provisions) may be appointed at any time for any trust created under the Date 2 trust agreement by the trust's family trustee if the family trustee deems that advisable.

Section 3.3 of the Date 2 trust agreement provides that successor independent trustees shall be appointed by: (a) the family trustee of the trust, (b) the person or persons having removal rights over the family trusteeship, or (c) the then beneficiary (or beneficiaries) of that trust in that order of preference. Each independent trustee must be a properly independent person or bank. After the death or incapacity of Grantor 1, Grantor 2, and Trustee 2, a bank independent trustee shall be required except as to any trust the primary beneficiary of which is (i) a descendant of either Grantor 1's father or Grantor 2's father, (ii) at least thirty-five years old, and (iii) not incapacitated. The person(s) having removal rights over the family trustee ship of any trust may stipulate circumstances under which one (or the only) independent trustee of a trust must be a bank (or need not be a bank as provided above).

Section 3.4 of the Date 2 trust agreement provides that vacancies in the office of family trustee as to any trust may be filled (by any person then at least age twenty-five) or left vacant, all as determined by the person(s) having removal rights over that family trusteeship.

Addendum A of the Date 2 trust agreement, executed simultaneously, incorporates certain technical provisions that are intended to be a part of the trust agreement as though they were set forth verbatim in the agreement.

Section 5.1(b)(1) of the Trust Technical Provisions provides that all other provisions to the contrary notwithstanding, in the case of each appointment trust, including Trust 6, the trust shall terminate on the earliest date designated by the rule of perpetuities date in the trust instrument creating the power(s) of appointment, the exercise(s) of which resulted in property being transferred to create the appointment trust.

Section 5.1(b)(2) of the Trust Technical Provisions provides that all other provisions to the contrary notwithstanding, any other trusts created under the Date 2 trust agreement, unless earlier terminated shall, in any and all events, terminate on the day prior to the expiration of twenty-one years after the death of the last survivor a group of individuals composed of (A) those whose names appear in the Date 2 trust agreement (other than solely as trustees, witnesses, notaries, etc.), (B) Grantor 1's parents and Grantor 2's parents, and (C) those of the lineal descendants of any of the individuals described in Section 5.1(b)(2)(A) (collectively the "Measuring Lives"). An individual will be a member of the group of Measuring Lives if the individual was living on (I) the date of the transfer if the trust was created by the transfer of property not theretofore held in any existing trust (other than a trust all the assets of which were unqualifiedly withdrawable by the person on the date of the transfer), or (II) Date 2.

On Date 9, Family X and Family Y entered into a participation agreement and later filed the Articles of Association for Trust Company, a limited banking association, in State 1. As part of that agreement, the initial participants adopted bylaws to provide for the orderly management of Trust Company. Trust Company was formed to provide specialized services to individuals and families facing the same challenges in trust management as Family X and Family Y. The bylaws and participation agreement were amended and restated on Date 10. Additional modifications have been proposed that are the subject of this private letter ruling request. Excerpts from the bylaws and participation agreement in this letter reflect the Date 10 modifications and the proposed modifications.

Trust Company initially had two classes of shares, Class A and Class B, each of which represent fifty percent of the total voting power of all Trust Company's outstanding shares. Family X owns all of the Class A shares and Family Y owns all of the Class B shares. The Class A shares were initially issued to and are still held by two trusts (not the subject of this letter ruling) whose grantor and beneficiaries are members of Family X and whose trustees are unrelated to members of Family Y. The Class B shares were initially issued to a voting trust of which eleven trusts for the benefit of the members of Family Y are the beneficial owners. Grantor 1 and Grantor 2 are members of Family X. Grantor 3 was the father of a member of Family X.

On Date 10, the Articles of Association of Trust Company were amended to authorize the issuance of shares of Class E stock. The Class E stock will have no voting rights except as set forth in Section 4.2(b)(2) of the Bylaws and Participation Agreement relating to the authorization of additional Class E shares and the amendment of the restrictions on transfer of ownership of the Class E shares. Under the amendment, Class A shares may only be transferred to Class A permitted transferees, Class B shares may only be transferred to Class B permitted transferees, and Class E shares may only be transferred with the approval the holders of more than sixty-five percent of the issued and outstanding Class E shares.

Section 7.2 of the bylaws and participation agreement of Trust Company provides in part that there shall initially be nine directors of Trust Company. The board

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of directors may expand the number of director positions. Notwithstanding the foregoing, Trust Company shall not have less than five or more than fifteen directors.

Section 7.17(a) of the bylaws and participation agreement of Trust Company provides that no officer or director of Trust Company shall participate in a decision of Trust Company (nor be present during any board or committee discussion of or vote on such a decision) involving the exercise of any discretionary power, other than investment powers, with respect to any trust of which Trust Company is a trustee if the officer, director, or spouse of the officer or director is:

- (1) a grantor or donor to the trust;
- (2) a current or contingent beneficiary of the trust; or
- (3) a descendant, or spouse (or former spouse) of a descendant of either Patriarch X or Patriarch Y. Section 7.17(a)(3), however, shall apply only to a trust a current or contingent beneficiary of which is a descendant, or a spouse (or former spouse) of a descendant, of either Patriarch X or Patriarch Y.

Section 7.17(b) provides that no officer or director of Trust Company shall participate in a decision of Trust Company (nor be present during any board or committee discussion of or vote on such a decision) involving the exercise of any incidents of ownership of any life insurance policy insuring the life of the officer or director.

Section 7.17 further provides that a director that is subject to the restrictions of Section 7.17 with respect to a decision of Trust Company, although absent from at least that part of the meeting, shall be deemed present for the purpose of determining whether a quorum is present for that part of the meeting.

Section 7.18 of the bylaws and participation agreement provides that an "Independent Director" is a director who is neither an employee of Trust Company nor, with respect to a particular trust of which Trust Company is a trustee, related or subordinate within the meaning of § 672(c) to any individual described in Section 7.17(a)(1), (2), or (3). The board of directors and the participants shall take all necessary actions to cause there to be in office at all times at least one director who is not precluded under Section 7.18 or Section 7.19 from participating in the making of any decisions of Trust Company described in Section 7.17.

Section 7.19 of the bylaws and participation agreement provides that subject to the requirements of applicable law and to enable directors to comply when advisable with taxation laws, restrictions on self-dealing, or other matters, a director is authorized to renounce, either revocably or irrevocably, for any period of time, by an instrument in writing delivered to and accepted by Trust Company, his or her right and power to participate in the making of any Trust Company decision involving the exercise of any discretionary power, other than investment or administrative powers not affecting any beneficiary's beneficial enjoyment, with respect to any trust of which Trust Company is a trustee.

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The current trustees propose to modify the trust agreements to update each trust's administrative provisions and to revise each trust's trustee requirements, trustee selection and trustee succession provisions to better provide for the long-term management of the trusts. Some of the modifications to the trusts redesignate substantive provisions from one article to another in order to provide uniformity in the structure of the Family X trusts. In addition to the proposed modifications, the current trustees intend to appoint Trust Company to serve as an independent trustee.

In the case of the Date 1 trust agreement, the modification will incorporate technical provisions that govern all aspects of the administration of the trusts created under the trust agreement.

Section 3.1(a) of the trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that at least one of the two independent trustee offices must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are "independent trustee" offices. One may be occupied by an individual and the second may be occupied by a properly qualified individual or bank or trust company appointed by the family trustee. Section 3.1(c) will provide that the third trustee position will be the "family trustee" office.

Section 3.2(d) of each trust agreement will provide that the family trustee may remove the corporate independent trustee for the reasons set forth in Section 3.2(d)(1) of the Trust Technical Provisions. The individual independent trustee may remove the corporate independent trustee with or without cause.

Section 3.2(d)(1) of the Trust Technical Provisions will describe the circumstances in which the family trustee may remove the corporate independent trustee. Section 3.2(d)(1)(A) will provide that the removal power may not be exercised in a manner contrary to the specific restrictions on fiduciary actions listed in Section 4.2(a) of the Trust Technical Provisions.

Section 3.2(d)(1)(B) of the Trust Technical Provisions will provide that the notice of removal will set forth the reason(s) for the removal of the corporate independent trustee. The reasons need not be such as to justify judicial removal and include the following: (i) the family trustee believes the expense of administering the trust can be reduced, or its investment needs can be better served, by a trustee change; (ii) a personality conflict or difference of opinion as to the investment philosophy to be followed by the trust has arisen with the trustee (or the trust officer assigned); (iii) the trustee's reports are not responsive to the needs of the family trustee; (iv) the trust would be more conveniently administered in another location; or (v) the trustee's services are being adversely affected by ineffectiveness, unavailability, trust officer turnover, or inexperience.

Section 3.2(e) of the trust agreement will provide that the family trustee may remove the then acting individual independent trustee for the reasons set forth in Section 3.2(e) of the Trust Technical Provisions. Section 3.2(e) of the Trust Technical Provisions will describe the circumstances in which the family trustee may remove the

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individual independent trustee. Section 3.2(e)(1) will provide that the power may not be exercised in a manner contrary to the specific restrictions on fiduciary actions listed in Section 4.2(a) of the Trust Technical Provisions. Section 3.2(e)(2) will provide that the notice of removal will set forth the reason(s) for removal that must meet the criteria and, in general, be similar to those described in Section 3.2(d)(1)(B), except for subsection 3.2(d)(1)(B)(v). In addition, Section 3.2(e)(2) will provide that the individual independent trustee may be removed if the trustee's services are being adversely affected by age, health, ineffectiveness, unavailability, or inexperience.

Section 3.2(f) of the trust agreement will provide that the right to remove the family trustee of each trust (with or without cause) is held by the top control list person(s) who shall be the first in order and is "eligible" to act. An individual is "eligible" to act as a family trustee control list person if he or she is not incapacitated and at least twenty-five years old (or at least twenty-one years old if he or she is one of the "most senior generation" descendants of a particular individual). When two or more persons occupy a place on a control list, their removal, appointment, and other actions must be by a majority of them. Section 3.2(f)(6) of the Trust Technical Provisions will provide, in part, that when only two people hold a right or power with respect to a trust, the two must act together unanimously.

With respect to Trust 1, Section 3.2(f)(2)(A) of the Date 1 trust agreement will provide that first level of the control list includes Son (or his designees). Section 3.2(f)(2)(B) will provide that the second level of the control list includes Son's spouse (or her designees). Section 3.2(f)(2)(C) will provide that the third level of the control list includes Son's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(2)(D) will provide that the fourth level of the control list includes the trust's most senior generation current beneficiary or beneficiaries who (or each of whom) is a descendant of Grantor 1 (or such beneficiary's or beneficiaries' designees). Section 3.2(f)(2)(E) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of the trust's current beneficiaries who (or each of whom) has one or more eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X (or the descendant's or descendants' designees).

With respect to the trusts created under the Date 2 trust agreement having a primary beneficiary who is a descendant of Grantor 1 and Grantor 2 (or who is a descendant's surviving spouse) or, in the case of Trust 6, who is a descendant of Grantor 3 (or who is a descendant's surviving spouse), Section 3.2(f)(1)(A) will provide that the first level of the control list includes, as to Trust 6 only, Father (or his designees). Section 3.2(f)(1)(B) will provide that the second level of the control list includes Son (or his designees). Section 3.2(f)(1)(C) will provide that the third level of the control list includes Son's spouse (or her designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes Son's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(1)(E) will provide that the fifth level of the control list includes the primary beneficiary of the trust (or that individual's designees). Section 3.2(f)(1)(F)

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will provide that the sixth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(G) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's primary beneficiary who has an eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X or Grantor 3, depending on the trust involved (or the descendant's or descendants' designees).

With respect to the trusts created under the Date 2 trust agreement having multiple beneficiaries, Section 3.2(f)(2)(A) will provide that the first level of the control list includes, as to Trust 6 only, Father (or his designees). Section 3.2(f)(2)(B) will provide that the second level of the control list includes Son (or his designees). Section 3.2(f)(2)(C) will provide that the third level of the control list includes Son's spouse (or her designees). Section 3.2(f)(2)(D) will provide that the fourth level of the control list includes Son's most senior generation descendant who (or each of whom) is an ancestor of any of the trust's current beneficiaries (or the ancestor's or ancestors' designees). Section 3.2(f)(2)(E) will provide that the fifth level of the control list includes the trust's most senior generation current beneficiary or beneficiaries who (or each of whom) is a descendant of Grantor 1 and Grantor 2 or of Grantor 3, depending on the trust involved (or the beneficiary's or beneficiaries' designees). Section 3.2(f)(2)(F) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's current beneficiaries who (or each of whom) has one or more eligible descendant(s), provided that each most senior generation descendant is a descendant of Patriarch X or Grantor 3, depending on the trust involved (or the descendant's or descendants' designees).

Section 3.3(a) of the trust agreement will provide that whenever a vacancy exists in the office of family trustee for any trust created under the trust instrument, the control list person(s) then having, and while continuing to have, the right to remove the family trustee of that trust, may, at any time, select and appoint an individual (age twenty-five or older), even the appointor himself or herself, to fill the vacancy (that, until thus filled, shall remain vacant).

Section 3.3(b) of the trust agreement will provide that whenever a vacancy exists in (i) the office of the sole remaining independent trustee of any trust, or (ii) one of the two independent trustee offices if the office is required to be kept filled (under the provisions of Section 3.5), the office shall be promptly filled by a qualified successor to that office (or to either office, if there is not stipulation then in effect under Section 3.5). The successor independent trustee shall be selected and appointed by the family trustee of the trust. If the vacancy is not filled within thirty days (or if there is no family trustee when the vacancy occurs), the successor independent trustee shall be selected and appointed by the top control list person(s) for the trust. If the vacancy is not filled within thirty days of when the top control list person (or all of those persons) first becomes aware that the vacancy had not been (or could not be) filled, the successor shall be selected and appointed by the representative beneficiary (or the representative beneficiaries) of the trust. If the vacancy is not filled within sixty days of when the representative beneficiary (or all of them) first becomes aware that the vacancy had not

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been filled, the successor shall be selected and appointed by the court having jurisdiction over the trust.

Section 3.3(c) of the trust agreement will provide that whenever a trust has only one independent trustee then acting and its other independent trustee office is not then required to be kept filled or left vacant (under Section 3.5), that trust's then family trustee may at any time appoint a second independent trustee (meeting the qualifications of the vacant office). Until the appointment is made, or until the circumstances change, the other independent trustee office shall remain vacant.

Section 3.4(a) of the trust agreement will provide that a corporate independent trustee must be an "independent" bank or trust company as described in Section 3.4(a) of the Trust Technical Provisions. Section 3.4(a) of the Trust Technical Provisions will provide that to be eligible to serve as an independent trustee of a specific trust under the trust agreement, a bank or trust company must have certain "corporate independent trustee qualifications."

Section 3.4(a)(2) of the Trust Technical Provisions will provide that an independent trustee position not filled by an individual must be filled by a bank or trust company with respect to which no donor to or current or contingent beneficiary of that trust personally holds voting rights, regardless of whether the rights are held in an individual or a fiduciary capacity (or both) that, when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the bank or trust company.

Section 3.4(a)(3) of the Trust Technical Provisions will provide that the bank or trust company must maintain and enforce "firewall rules" prohibiting any individual who is "connected" to the bank or trust company (including an officer, director, employee, or "one percent shareholder", as defined in the document) from participating in a decision of the bank or trust company involving the exercise of either: (A) any incidents of ownership with respect to any insurance on the life of the individual, whether owned by the bank or trust company or owned by any trust as to which the bank or trust company is acting as an independent trustee, and/or (B) any discretionary power, other than investment or administrative powers not affecting any current or contingent beneficiary's enjoyment of that trust, the effect of which would be to make or withhold any distribution from (or to grant or withhold permission to enjoy any asset of) that trust in favor of: (i) any individual (if the connected individual is a living donor or an individual related to a living donor) or (ii) a current or contingent beneficiary or any individual whom the beneficiary is then under an obligation to support (if the connected individual is the beneficiary or an individual related to the beneficiary), but the paragraph (B) restriction shall not apply to any individual who would be eligible to serve as an individual independent trustee of that trust under paragraph (b)(3) of Section 3.4, substituting for this purpose, "one percent" for "fifty percent" in subparagraph (B) of Section 3.4(b)(3).

Section 3.4(a)(3)(B)(ii)(I) of the Trust Technical Provisions will provide that a "one percent shareholder" shall mean any individual who holds voting rights, whether the rights are held in an individual or a fiduciary capacity (or both) that, when aggregated

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with the voting rights of any trust of which the individual is a donor or a current or contingent beneficiary, represent more than one percent of the voting rights of all of the then issued and outstanding shares of the bank or trust company.

Section 3.4(a)(3)(B)(ii)(II) of the Trust Technical Provisions will provide that an individual shall be considered to be “related” to a living donor or current or contingent beneficiary if related in any of the following classifications: spouse, ancestor, lineal descendant, brother or sister.

Section 3.4(b) of the trust agreement will provide that each individual independent trustee shall be an “independent” and “experienced” individual who is not related to nor employed by any trust donor or beneficiary as described in Section 3.4(b) of the Trust Technical Provisions. Section 3.4(b) of the Trust Technical Provisions will provide that to be eligible to serve as an independent trustee of a specific trust under the trust agreement, an individual must have certain “individual independent trustee qualifications.” With respect to trusts created under the Date 2 trust agreement, the requirements apply only to independent trustees other than Trustee 2 as the initial independent trustee. Section 3.4(b)(3) will provide the individual may not be either (A) a donor to or a current or contingent beneficiary of the trust nor related to a donor or beneficiary who is then living in any of the following classifications: spouse, ancestor, lineal descendant, brother, or sister; or (B) an employee of a donor to or current or contingent beneficiary of the trust or of any corporation, firm, or partnership (I) in which a donor or beneficiary is an executive or (II) with respect to which a donor or beneficiary personally holds voting rights, regardless of whether the rights are held in an individual or a fiduciary capacity (or both), that when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the corporation, firm, or partnership.

Section 3.5 of the trust agreement will provide that the top control list person(s) for any present or future trust under the agreement may by stipulation require that, under certain circumstances either independent trustee office shall be (i) kept filled, (ii) left vacant, or (iii) be filled or left vacant as the family trustee may, from time to time, determine.

Section 4.2(a) of the Trust Technical Provisions will provide that all trustees at any time acting with respect to any trust under the trust agreement, when exercising their powers and discretions as trustees, shall act as fiduciaries and not as the holders of powers for their own benefit. Specifically, Section 4.2(a)(6) provides that any power that any trustee of any trust(s) established under trust agreement may have to remove any trustee(s) shall be exercisable in accordance with the terms and procedures set forth regarding removal. Furthermore, unless a trustee removal power is expressly referred to or described either: (a) as an absolute right and power that the powerholder may exercise to remove a trustee from office that is exercisable by the powerholder with or without cause or (b) as a power that is not held (or not intended to be held) in a fiduciary capacity, all trustee removal rights shall be exercisable only in furtherance of trust purposes and not as a means of obtaining the personal goals of the powerholder (or a trust beneficiary) by influencing, through trustee removal, the manner in which

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discretions granted exclusively to the trustee(s) subject to removal are to be exercised. Section 4.2(a)(6)(B) will provide a procedure for a removed trustee to obtain judicial review regarding whether a decision to remove a trustee was in furtherance of trust purposes or intended to achieve personal goals.

Section 5.1(b) of the Trust Technical Provisions will provide that all other provisions of the agreement to the contrary notwithstanding, each trust that comes into existence under the agreement shall be subject to the following limitations on its duration. Unless earlier terminated, each trust under the agreement (except any trust all of the assets of which are then unqualifiedly withdrawable by its primary beneficiary) shall, in any and all events, terminate on the "rule against perpetuities required termination date" applicable to that trust.

With regard to Trust 1 created under the Date 1 trust agreement, the required termination date on which the trust shall terminate shall be the day prior to the expiration of twenty-one years after the death of the last survivor of a group of individuals composed of Grantor 1 and her lineal descendants who were living on Date 1, namely: Grantor 1 and Son.

With regard to Trust 2, Trust 3, Trust 4, and Trust 5 created under the Date 2 trust agreement, the required termination date on which the trusts shall terminate shall be the day prior to the expiration of twenty-one years after the death of the last survivor of a group of individuals composed of Grantor 1 and Grantor 2's parents and their lineal descendants who were living on: (1) Date 4 for Trust 2, (2) Date 5 for Trust 3, (3) Date 7 for Trust 4, and (4) Date 8 for Trust 5.

With regard to Trust 6 created under the Date 2 trust agreement, the required termination date on which the trusts shall terminate shall be the day prior to the expiration of twenty-one years after the death of the last survivor of a group of individuals composed of Grantor 3's parents and their lineal descendants who were living on Date 11.

On Date 12, Probate Court in State 2 issued three orders affecting the various trusts that are the subject of this private letter ruling. The orders approve an interim trustee succession plan proposed by the trustees and agreed to by the adult beneficiaries of the various trusts and a guardian ad litem representing the minor and unborn beneficiaries. The agreement signed by the parties defines a "trust restructuring period" that begins on Date 12. The trust restructuring period ends after the Internal Revenue Service issues a private letter ruling and Probate Court issues a final order approving the trust restructuring plan.

With respect to Trust 1, the Date 12 Probate Court order provides that during the trust restructuring period, any requirement that a currently acting individual trustee must resign in favor of a bank or trust company is suspended. In addition, the order creates an additional independent trustee office and appoints Trustee 3 to fill the office. If a vacancy occurs in a co-independent trustee office during the trust restructuring period, the vacancy shall be filled by a qualified individual or left vacant in the discretion of the

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person(s) who hold the power to appoint a successor independent trustee under the applicable section of the original trust agreement.

With respect to Trust 2, Trust 3, Trust 4, and Trust 5, the Date 12 Probate Court order provides that during the trust restructuring period, the requirement that allows or requires (whether or not by stipulation) a bank or trust company independent trustee to be appointed as sole or co-independent trustee is suspended. In addition, the order appoints Trustee 3 to fill the second independent trustee office. If a vacancy occurs in a co-independent trustee office during the trust restructuring period, the vacancy shall be filled by a qualified individual or left vacant in the discretion of the person(s) who hold the power to appoint a successor independent trustee under the applicable section of the original trust agreement.

With respect to Trust 6, the Date 12 Probate Court order provides that during the trust restructuring period, the requirement that a currently acting individual trustee must resign in favor of a bank or trust company upon the death of Trustee 2 is suspended. If a vacancy occurs in a co-independent trustee office during the trust restructuring period, the vacancy shall be filled by a qualified individual or left vacant in the discretion of the person(s) who hold the power to appoint a successor independent trustee under the applicable section of the original trust agreement.

The trustees have requested the following rulings: (1) the implementation of the proposed trust restructuring plan will not cause the value of the assets of the trusts created under Trust Agreement to be included in the gross estate of any living grantor or beneficiary under §§ 2036, 2038 or 2041; and (2) the implementation of the proposed trust restructuring plan will not result in any change in the inclusion ratio of any of the trusts created under Trust Agreement for purposes of the generation-skipping transfer tax.

Ruling 1

Section 2036(a) provides that the value of the gross estate shall include the value of all property 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 property, or
- (2) the right either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2036(b)(1) provides in part that for the purposes of § 2036(b)(1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the three-year period ending on the date of the decedent's death, the decedent owned (with the application of § 318), or had the right (either alone

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or in conjunction with any person) to vote, stock possessing at least twenty percent of the total combined voting power of all classes of stock.

Section 20.2036-1(b)(3) provides in part that if a decedent reserved the unrestricted power to remove or discharge a trustee at any time and to appoint himself as trustee, the decedent is considered as having the powers of the trustee.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property 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, where the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired the power), to alter, amend, revoke, or terminate, or where any power is relinquished during the three-year period ending on the date of decedent's death.

Section 20.2038-1(a)(3) provides in part that if a decedent had the unrestricted power to remove or discharge a trustee at any time and appoint himself trustee, the decedent is considered as having the powers of the trustee.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has, at the time of his death, a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) provides, in part, that a power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of the instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a

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power of appointment. However, the mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of the fiduciary duties is not a power of appointment.

Rev. Rul. 95-58, 1995-2 C.B. 191, holds that a decedent/grantor's reservation of an unqualified power to remove a trustee and appoint an individual or corporate successor trustee that is not related or subordinate to the decedent within the meaning of § 672(c), is not considered a reservation of the trustee's discretionary powers of distribution over the property transferred by the decedent/grantor to the trust. Accordingly, the trust corpus was not included in the decedent's gross estate under §§ 2036 or 2038. The ruling notes that the Eighth Circuit in Estate of Vak v. Commissioner, 973 F.2d 1409 (8th Cir. 1992), concluded that the decedent had not retained dominion and control over assets transferred to a trust by reason of his power to remove and replace the trustee with a party that was not related or subordinate to the decedent. Accordingly, the court held that under § 25.2511-2(c), the decedent made a completed gift when he created the trust and transferred assets to it.

Section 672(c) defines the term "related or subordinate party" to mean any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any one of the following: the grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

In order for §§ 2036-2038 to apply, the decedent must have made a transfer of property 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 property. For purposes of §§ 2036 and 2038, it is immaterial in what capacity the power was exercisable by the decedent.

In the present case, only the independent trustee(s) possess the power to make discretionary distributions from Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6. Section 3.2 of each trust agreement and the Trust Technical Provisions governing all of the trusts will authorize the removal of the independent trustee(s) by either the family trustee (that may include the grantors or a beneficiary of the trusts) or the other independent trustee (that may include Trust Company). Section 3.3 of each trust agreement and the Trust Technical Provisions will describe how vacant trustee positions will be filled. Section 3.3(b) of each trust agreement will provide that if a vacancy occurs in the office of an independent trustee and that office is required to be filled under Section 3.5, the appointment of a successor trustee will be made, in order of preference, by the family trustee, the top control list person, the representative beneficiary, or a court having jurisdiction over the trust. Section 3.3(c) of each trust agreement will provide that, if a vacancy in the office of individual independent trustee is not required to be filled under Section 3.5, the family trustee may fill the vacancy or

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allow the office to remain vacant. In either case, the person or corporation filling the independent trustee office must fill the requirements of the office as described in Section 3.4 of the Trust Technical Provisions.

Section 3.4(b) of the Trust Technical Provisions will preclude a donor to or a current or contingent beneficiary of a trust from serving as the individual independent trustee. In addition, Section 3.4(a) of the Trust Technical Provisions will preclude any donor to or current or contingent beneficiary of a trust from participating in discretionary distribution decisions if they are connected to a bank or trust company serving as the corporate independent trustee. Sections 3.4(a) and 3.4(b) of the Trust Technical Provisions will further preclude any individual related to a living donor or beneficiary as spouse, ancestor, lineal descendant, brother, sister, or employee from serving as the individual independent trustee of a trust. In addition, the sections preclude these individuals from participating in discretionary distribution decisions if they are connected to a bank or trust company serving as the corporate independent trustee.

Section 3.4(b) will provide that no employee of any corporation, firm, or partnership in which a donor or beneficiary is an executive or with respect to which a donor or beneficiary personally holds voting rights regardless of whether the rights are held in an individual or a fiduciary capacity (or both), that when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the corporation, firm, or partnership may serve as the individual independent trustee.

Section 3.4(a)(2) requires that the corporate independent trustee be a bank or trust company in which no donor to or current or contingent beneficiary of the trust personally holds voting rights that, when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the bank or trust company. Section 3.4(a)(3) will also include a “firewall” provision precluding anyone connected to the bank from participating in discretionary distribution decisions in favor of any individual (if the connected individual is or is related to a living donor), a current or contingent beneficiary, or any individual whom the beneficiary is then under an obligation to support (if the connected individual is or is related to the beneficiary) unless the connected individual meets the requirements of an individual independent trustee and is not an employee of any corporation, firm, or partnership in which a donor or beneficiary personally holds voting rights, regardless of whether the rights are held in an individual or a fiduciary capacity (or both), that, when aggregated with any voting rights held by that trust, are more than one percent of the total voting rights relating to the control of the corporation, firm, or partnership.

The provisions described above thus prohibit the grantors from participating, directly or indirectly, in discretionary distribution decisions. In addition, the provisions prohibit any individual beneficiary from participating, directly or indirectly, in discretionary distribution decisions. Finally, the provisions preclude anyone closely related to a donor or a current or contingent beneficiary from participating in discretionary distribution decisions.

Furthermore, under the Trust Company bylaws and participation agreement, the grantors, beneficiaries and other family members are all eligible to participate as a director of Trust Company. However, Section 7.17 expressly prohibits any officer or director from participating in a decision of Trust Company involving the exercise of a discretionary power, other than investment powers, of any trust of which the officer, director, or spouse of the officer or director is a grantor or donor to the trust or a current or contingent beneficiary of the trust. In addition, family members are prohibited from participating in Trust Company decisions relating to discretionary distributions from trusts where the current or contingent beneficiary of the trust (or his or her spouse) is a descendant of either Patriarch X or Patriarch Y. Therefore, the grantors and the beneficiaries of the trusts created under Trust Agreement are sufficiently prohibited from participating in decisions regarding discretionary distributions from their own trusts. In addition, the structure of the bylaws prohibits the grantors and beneficiaries of the Family X and Family Y trusts from participating in Trust Company's exercise of discretion to make distributions from any of either family's trusts preventing the possibility of outside reciprocal agreements that may indirectly give members of Family X effective control over the discretionary distributions from Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6.

The combination of the firewall provisions in the revised trust agreements, Trust Technical Provisions, and the Trust Company Bylaws preclude a donor of any of the trusts from having the retained dominion and control as contemplated by §§ 2036 or 2038. Neither Grantor 1 nor Grantor 2, therefore, will be considered as having the powers of the trustees under §§ 20.2036-1(b)(3), or 20.2038-1(a)(3) solely as a result of possessing, directly or indirectly, the power to remove and/or to replace either independent trustee under the trust agreements. In addition, although both grantors may be shareholders in and participate in the daily activities of Trust Company, they are precluded from participating in discretionary distribution decisions made by Trust Company with respect to trusts created under the trust agreements. Accordingly, based on the facts submitted and the representations made, we conclude that the implementation of the proposed trust restructuring plan, including the appointment of Trust Company as trustee of the trusts and Trust Company's future exercise of discretionary powers over distributions to the beneficiaries of the trusts, will not result in the inclusion of any portion of the trusts in the estate of a grantor under § 2036 or 2038.

Furthermore, the combination of provisions also preclude a beneficiary of any of the trusts from having the power to affect the beneficial enjoyment of the trust property as contemplated by § 2041. No beneficiary, therefore, will be considered as having the powers of the trustee under § 20.2041-1(b)(1) solely as a result of possessing, directly or indirectly, the power to remove and/or replace either independent trustee under the trust agreements. In addition, although beneficiaries may be shareholders in and participate in the daily activities of Trust Company, they are precluded from participating in discretionary distribution decisions made by Trust Company with respect to trusts created under the trust agreements. Accordingly, based on the facts submitted and the representations made, we conclude that the implementation of the proposed trust restructuring plan, including the appointment of Trust Company as trustee of the trusts and Trust Company's future exercise of discretionary powers over distributions to the

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beneficiaries of the trusts, will not result in the inclusion of any portion of the trusts in the estate of a beneficiary under § 2041.

Ruling 2

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term “generation-skipping transfer” to include a taxable distribution, taxable termination, and a direct skip.

The trusts created under the Date 1 trust agreement are generation-skipping transfer trusts because they provide for distributions to one or more generation of beneficiaries below the grantors’ generations. Date 1 is prior to September 25, 1985, and Trust 1 was irrevocable on September 25, 1985. The trustees represent that, with respect to any additions made to Trust 1 after September 25, 1985, the transfers were either from an exempt trust or qualified for the gift tax annual exclusion. In addition, transfers made to these trusts prior to April 1, 1988 that were not from an exempt trust, qualified for a zero generation-skipping transfer tax inclusion ratio under § 26.2601-1(b)(1)(i) or § 2642(c). Finally, a sufficient portion of the donor’s (and donor’s spouse’s, when applicable) generation-skipping transfer tax exemption was allocated to the transfers made to the trusts after March 31, 1988. Accordingly, prior to the modifications, Trust 1 had an inclusion ratio of zero.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), that relate to property includible in a grantor’s gross estate under §§ 2038 and 2042. In the present case, the trusts created under Trust Agreement are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if - (1) the power of appointment was created in an irrevocable trust that is not subject to chapter 13 under paragraph (b)(1) of this section; and (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of twenty-one years plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of paragraph (b)(1)(v)(B)(2), the

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exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed ninety years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period. If a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

With respect to Trust 1, the proposed modifications do not shift a beneficial interest in any trust to a beneficiary who occupies a lower generation than the person(s) who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. We therefore conclude that the proposed modifications will not change the inclusion ratio of Trust 1.

The trusts created under the Date 2 trust agreement are generation-skipping transfer trusts because they provide for distributions to one or more generations of beneficiaries below the grantors' generations. The trustees represent that a sufficient portion of the donor's (and donor's spouse's, when applicable) generation-skipping transfer tax exemption was allocated to the transfers made to Trust 2, Trust 4, Trust 5, and Trust 6. Accordingly, prior to the modifications, each trust had an inclusion ratio of zero.

A modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification

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does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

In this case the proposed modifications do not shift a beneficial interest in any trust to a beneficiary who occupies a lower generation than the person(s) who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. We therefore conclude that the proposed modifications will not change the inclusion ratio of Trust 2, Trust 4, Trust 5 or Trust 6.

The trustees represent that Trust 3 has an inclusion ratio of one for generation-skipping transfer tax purposes and that will not change as a result of the proposed modifications.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent your attorney.

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

Sincerely,

James F. Hogan

James F. Hogan
Acting Branch Chief, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy of this Letter for § 6110 purposes