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Department of the Treasury

Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-108707-10

Date: JUNE 29, 2010

Re:

LEGEND

Settlor =

Son 1 =

Son 2 =

Daughter 1 =

Daughter 2 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

Grandchild 6 =

Grandchild 7 =

Grandchild 8 =

Grandchild 9 =

Great-grandchild =

A =

B =

Trust =

Trust A =

Trust B =

Trust C =

Trust D =

Trustee =

Date 1 =

Date 2 =

State =

Statute 1 =

Statute 2 =

Statute 3 =

Dear :

This responds to a letter from your authorized representative dated February 22, 2010, and subsequent correspondence, requesting rulings on the gift, estate and generation-skipping transfer (GST) consequences resulting from the proposed modifications to a trust.

You represent the facts to be as follows. On Date 1, Settlor created an irrevocable trust, Trust. Date 1 is prior to September 25, 1985. Trust is governed by the laws of State, and Trustee, a corporation, is currently serving as trustee.

Section 1 of Trust provides that Trust is to be divided into four equal trusts, one for each of Settlor's children: Trust A for Son 1, Trust B for Son 2, Trust C for Daughter 1, and Trust D for Daughter 2 (Separate Trusts). Section 2(a) of Trust provides that the net income of each Separate Trust shall be distributed to or applied for the beneficiary thereof at least quarterly during that beneficiary's lifetime. Section 2(b) provides that the corporate trustee, if any, may in its sole discretion, pay over to or apply for the beneficiary of each Separate Trust so much of the principal of such beneficiary's trust as the trustee deems necessary for the education, support, maintenance, or health of the beneficiary in the standard of living to which the beneficiary is accustomed as of Date 1, but in determining need, the corporate trustee shall take into consideration such beneficiary's other sources of funds.

Under section 2(c) of Trust, each beneficiary has a testamentary special power of appointment with respect to his or her Separate Trust. In default of an exercise of the power, such beneficiary's Separate Trust is to be distributed in the following order: (a) to such beneficiary's then living issue, per stirpes, (b) but if none, to Settlor's then living

issue, per stirpes, (c) but if none, among the then living issue of A and B in equal shares, per stirpes.

Son 1 has two children and one grandchild: Grandchild 1, Grandchild 2, and Great-grandchild. Son 2 has two children: Grandchild 3 and Grandchild 4. Daughter 1 has two children: Grandchild 5 and Grandchild 6. Daughter 2 has three children: Grandchild 7, Grandchild 8 and Grandchild 9.

You represent that each Separate Trust consists almost exclusively of only concentrated positions of a single issue of non-voting common stock of a privately held corporation, and that the administration of such trusts by a corporate trustee confronted with both the fiduciary investment diversification considerations associated therewith and compliance with federal regulations imposed on a corporate trustee, would be burdensome to the corporate trustee and costly to Trust and each Separate Trust.

Statute 1 authorizes a settlor (if living), all beneficiaries, the currently serving trustee and any creditors whose interests may be affected to, by written instrument, enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the terms of a trust. Pursuant to Statute 1, the parties have executed an agreement (Agreement) dated Date 2 to modify Trust as follows:

The second paragraph of Section 5 of Trust, and each Separate Trust thereunder, is modified as follows:

At any time during the continuance of a separate trust, the then current beneficiary of such separate trust, or a majority of all the then current beneficiaries thereof who have reached the age of twenty-one (21) years (if such separate trust has more than one then current beneficiary), may remove or cause the removal of any corporate Trustee or individual successor Trustee as Trustee under such separate trust. Upon such removal, or in the event of the resignation of the Trustee, corporate Trustee or individual successor Trustee of a separate trust, the then current beneficiary of such separate trust, or a majority of all the then current beneficiaries thereof who have reached the age of twenty-one (21) years (if such separate trust has more than one then current beneficiary), may designate at their own discretion, another corporate Trustee and/or individual successor Trustee(s) to serve as successor Trustee(s) of such separate trust hereunder.

In addition, section 2(b) of Trust, and each Separate Trust thereunder, is modified as follows:

(b) Any corporate Trustee, or individual successor Trustee, may, in its sole discretion, pay over to or apply for a beneficiary so much of the principal of such beneficiary's separate trust as the Trustee deems necessary for the education, support, maintenance or health of such beneficiary in the standard of living to which such beneficiary was accustomed at the date of this Agreement, but in determining need, the corporate Trustee or individual successor Trustee, as the case may be, shall take into consideration such beneficiary's other sources of funds.

Agreement is expressly contingent upon receiving a favorable letter ruling from the Internal Revenue Service. You represent that there have been no additions to Trust since September 25, 1985.

You request the following rulings:

1. Agreement will not result in the making of a gift for federal gift tax purposes by any beneficiary of any Separate Trust established under Trust.

2. Agreement will not result in the inclusion of the value of any trust assets in the estate of any beneficiary of any Separate Trust established under Trust for federal estate tax purposes.

3. Agreement will not cause Trust, or any Separate Trust established thereunder, or any distributions from Trust, or any Separate Trust established thereunder, to be subject to GST tax.

GIFT TAX ISSUE – RULING NO.1

Section 2501(a) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year.

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 25.2511-1(b) of the Gift Tax Regulations provides that, as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him or her no power to change its disposition, whether for his or her own benefit or for the benefit of another, the gift is complete. But, if upon a transfer, a 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 fact in the particular case.

Section 25.2511-1(c)(1) provides that any transaction in which an interest in

property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Agreement modifies Trust to permit the designation of individual successor trustees, as well as corporate successor trustees. Agreement further modifies Trust to grant an individual successor trustee or individual successor co-trustees the same discretionary authority as the corporate trustee to make principal distributions for the education, support, maintenance or health of the beneficiary. These modifications are administrative in nature and do not affect the interests of the beneficiaries. The beneficiaries of Trust and each Separate Trust will have the same interests before and after the modification. Accordingly, based on the facts submitted and representations made, we conclude that Agreement will not cause any beneficiary of any Separate Trust established under Trust to make a taxable gift for purposes of the federal gift tax under § 2501.

ESTATE TAX ISSUE – RULING NO. 2

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2035(a) provides that (1) if the decedent transferred an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038, or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate includes the value of any property (or interest therein) that would have been so included. Under § 2035(b), the gross estate shall be increased by the amount of any gift tax paid by the decedent or his estate on any gift made by the decedent or his spouse during the three-year period ending on the date of decedent's death.

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) 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 from the property.

Section 2037(a) provides that the value of the gross estate includes 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 case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate includes 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 case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death. Section 20.2038-1(a)(2) of the Estate Tax Regulations provides that § 2038 does not apply if the decedent's retained power could be exercised only with the consent of all parties having an interest in the property and the power adds nothing to the rights of the parties under local law.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property with respect to which the decedent possessed a general power of appointment at the time of death. Section 2041(b)(1) defines the term "general power of appointment" as 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. Under § 2041(b)(1)(A), a power to consume, invade, or appropriate property for the benefit of the decedent relating to the health, education, support, or maintenance of the decedent shall not be considered a general power of appointment.

Section 20.2041-1(b)(1) provides, in part, that if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a 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 interest therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment.

Section 20.2041-1(c)(1) provides, in part, that the term "general power of appointment" as defined in § 2041(b)(1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except: (i) joint powers, to the extent provided in §§ 20.2041-2 and 20.2041-4; and (ii) certain powers limited by an ascertainable standard, to the extent provided in § 20.2041-1(c)(2). A power of appointment exercisable for the purpose of discharging a

legal obligation of the decedent or for his pecuniary benefit is considered a power of appointment exercisable in favor of the decedent or his creditors.

Section 20.2041-1(c)(2) provides that a power to consume, invade, appropriate income or corpus, or both, for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is, by reason of § 2041(b)(1)(A), not a general power of appointment. A power is limited by such a standard if the extent of the holder's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). The words "support" and "maintenance" are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard. Examples of powers which are limited by the requisite standard are powers exercisable for the holder's "support," "support in reasonable comfort," "maintenance in health and reasonable comfort," "support in his accustomed manner of living," "education, including college and professional education," "health," and "medical, dental, hospital and nursing expenses and expenses of invalidism." In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income before the power can be exercised.

Section 2514 provides for a similar definition of a general power of appointment for gift tax purposes, and § 25.2514-1(c)(2) contains provisions similar to § 20.2041-1(c)(2). 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.

Statute 2 provides that the judicial standard of review for discretionary trusts is that the trustee shall exercise a discretionary power reasonably, in good faith, and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except that with respect to distribution decisions a reasonableness standard shall not be applied to the exercise of discretion by the trustee of a wholly discretionary trust. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard. Statute 3 provides that "ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or 2514(c)(1).

In order for §§ 2035 through 2038 to apply, a 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.

In the present case, the proposed modifications to Trust do not change the beneficial interests of the beneficiaries. Thus, the proposed modifications do not constitute a transfer by any beneficiary within the meaning of §§ 2035 through 2038. Further, under the facts presented, the power of a trustee to distribute principal from a trust is limited by an ascertainable standard relating to health, maintenance, support and education, under the terms of the Trust instrument and State law. Accordingly, pursuant to §§ 20.2041-1(c)(2) and 25.2514-1(c)(2), a successor trustee will not possess a general power of appointment that will cause the corpus of Trust to be included in a beneficiary's gross estate under § 2041. See Rev. Rul. 78-398, 1978-2 C.B. 237. We therefore conclude that the proposed modifications to Trust will not cause any portion of the assets of Trust to be includible in the gross estate of any beneficiary of Trust or any Separate Trust established under Trust, except to the extent of property that is distributed to such person and remains in his or her estate at the date of his or her death.

GENERATION-SKIPPING TRANSFER TAX ISSUE -- RULING NO. 3

Section 2601 imposes a tax on every GST which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1)(i) provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was 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) provides that any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in settlor's gross estate under § 2038 or 2042 if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, 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) provides that a modification will not cause an exempt trust to be subject to the GST tax 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 for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer.

In the present case, Trust is exempt from the GST tax because Trust was irrevocable on September 25, 1985. You represented that no additions, actual or constructive, have been made to Trust after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), Trust and the Separate Trusts created under Trust are not subject to the GST tax.

You represent that the proposed modifications are authorized under State law. Based on the facts and representations, we conclude that the proposed modifications: (1) will not result in a shift of any beneficial interest in 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 modifications, or (2) extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original trust. Therefore, the proposed modifications will not cause Trust or any Separate Trust created under Trust to be subject to the provisions of chapter 13.

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

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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 the appropriate parties. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

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

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

Sincerely yours,

PLR-108707-10

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Leslie H. Finlow
Acting Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes