

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Re:

Refer Reply To:

CC:PSI:B4

PLR-104168-14

Date:

July 14, 2014

Legend

Settlor =

Grandchild =

Trust =

Date = :

Dear :

This letter responds to your letter dated October 22, 2013, submitted on your behalf by your authorized representative, requesting a ruling on application of § 2041(a) of the Internal Revenue Code.

Facts

Settlor died on Date. Grandchild is the beneficiary of Trust, a trust created under Article 9C of Settlor's last will. Paragraph 1 of Article 9C provides that during Grandchild's life, the trustees of Trust are to make discretionary payments of the net income and principal to or for the benefit of Grandchild and Grandchild's issue.

Paragraph 2 of Article 9C provides that upon the death of Grandchild, the trustees of Trust are to pay over the principal, as then constituted, and any accumulated or undistributed income, "to such among [Settlor's] issue" as Grandchild shall validly appoint in Grandchild's last will. Any balance of Trust remaining and not effectively appointed by Grandchild in Grandchild's last will is disposed of pursuant to paragraphs 2 and 3 of Article 9C of Settlor's last will.

Rulings Requested

Grandchild has requested the following rulings:

1. That the testamentary power of appointment granted to Grandchild in Trust does not constitute a general power of appointment within the meaning of § 2041(b)(1); and
2. The existence, exercise, failure to fully exercise, or partial or complete release of Grandchild's power to appoint the principal and any accumulated or undistributed income of Trust will not cause the value of the property in Trust to be included in Grandchild's gross estate under § 2041(a).

Law and Analysis

Section 2041(a)(2) provides that the value of the gross estate includes the value of all 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 such a power of appointment by a disposition which 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 is 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, with exceptions not relevant here, that the term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides 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. Section 20.2041-1(c)(1)(a) provides that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate.

In this case, Grandchild may appoint by will the principal and accumulated or undistributed income of Trust to the class consisting of Settlor's issue. Because Grandchild's power of appointment is a testamentary power, Grandchild may not appoint any part of Trust to Grandchild or to Grandchild's creditors during Grandchild's life. In addition, based on the terms of Trust, the reference to "such among [Settlor's]

issue” as a permissible class of appointees of Grandchild’s testamentary power is properly viewed as not including Grandchild’s estate or the creditors of Grandchild’s estate after Grandchild’s death.

Accordingly, based on the information submitted and the representations made, we conclude that: (1) Grandchild’s testamentary power of appointment over the principal and accumulated or undistributed income of Trust does not constitute a general power of appointment within the meaning of § 2041(b)(1) and (2) the existence, exercise, failure to fully exercise, or partial or complete release of Grandchild’s power to appoint the principal and accumulated or undistributed income of Trust will not cause the value of the property in Trust to be included in Grandchild’s gross estate under § 2041(a).

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

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue 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 letter is being sent to your authorized representative.

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.

Sincerely,

Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: