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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

October 10, 2003

Legend

Grantor =

Trust Agreement =

Date 1 =

Child 1 =

Trust 1 =

Child 2 =

Trust 2 =

Child 3 =

Trust 3 =

Trustee 1 =

Trustee 2 =

Date 2 =

Year 1 =

Year 2 =

Date 3 =

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Family X =
 Family Y =
 Trust Company =
 State 1 =
 Date 4 =
 Patriarch X =
 Patriarch Y =
 Date 5 =
 Probate Court =
 State 2 =
 Date 6 =
 Measuring Life 1 =
 Measuring Life 2 =
 Measuring Life 3 =
 Measuring Life 4 =
 Measuring Life 5 =
 Measuring Life 6 =
 Date 7 =
 Trustee 3 =

Dear Sirs:

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 executed Trust Agreement on Date 1. Date 1 is prior to September 25, 1985. Trust Agreement creates a series of irrevocable trusts for the grantor's children: Child 1 (Trust 1), Child 2 (Trust 2), and Child 3 (Trust 3). Trust Agreement names Trustee 1 as the initial family trustee and Trustee 2 as the initial independent trustee. Trust 1 is not the subject of this private letter ruling request. This private letter ruling addresses Trust 2 and Trust 3.

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The trustees represent that additions were made to the trusts after September 25, 1985. Grantor was the beneficiary of two trusts created on Date 2, not the subject of this private letter ruling, each of which provided him with a power to appoint the property during his life. The powers to appoint the property were not “general” powers as that term is defined in § 2041(b). Date 2 is prior to September 25, 1985. It has been represented that each of these trusts were irrevocable as that term is defined in § 26.2601-1(b)(1)(ii) of the Generation-Skipping Transfer Tax Regulations. In Year 1 and Year 2, Grantor exercised the power of appointment provided in each trust by appointing assets from each trust to Trust 3.

The trustees further represent that all other transfers to Trust 2 and Trust 3 after September 25, 1985, qualified for the gift tax annual exclusion under § 2503(b). Accordingly all gifts to the trust prior to April 1, 1988, were deemed to have a zero inclusion ratio for generation-skipping transfer tax purposes under § 2642(c) then in effect. With respect to all gifts to the trusts made after March 31, 1988, a portion of the donor’s (and the donor’s spouse, when applicable) generation-skipping transfer tax exemption was allocated in an amount sufficient to give both trusts an inclusion ratio of zero for generation-skipping transfer tax purposes.

Article 1 of the Trust Agreement provides the dispositive provisions of the trusts. The trustees, without the necessity of physical segregation, shall divide the initial trust property into equal parts, one part each for Child 1, Child 2, and Child 3. Each of the parts shall constitute the corpus of a separate and distinct trust for the primary benefit of each child of Grantor. The child for whom the trust benefit shall be referred to as the “beneficiary” of that particular separate trust.

Section 1.1 of the Trust Agreement provides that any part or all of the net income and/or corpus of a trust may, at any time or times, in the sole discretion of the independent trustee of the trust, be distributed to or for the benefit of: (a) the beneficiary of the separate trust and/or (b) any one or more of those of the lineal descendants of the beneficiary who are then living even though not presently living, including those whose parent or parents are then living. 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 1.4 of the Trust Agreement provides that, in dividing up the assets of a separate trust on its termination, as provided in Section 1.6(b) of the Trust Agreement, each share representing a child of the trust’s beneficiary shall be charged with the total amount of the fair market value on the date of each of all distributions pursuant to Section 1.1 and/or Section 1.6(a) that have been made to or for the benefit of the child or to any of the child’s descendants (a) at any time or times subsequent to the child attaining twenty-three years of age and (b) at any time or times prior thereto, but only to the extent the distributions were designated by the independent trustee as having been made to assist the child to marry, to acquire a home, or to support his or her family; and each share representing a lineal descendant of a deceased child of the beneficiary shall be charged with the descendant’s proportionate share of the total amount that would

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have been charged against the share of the deceased child under this section had the child not died, as well as with the total amount of all such distributions that have been made to the descendant at any time or times after the child's death.

Section 1.5 of the Trust Agreement provides that, at any time after the execution of Trust Agreement, the beneficiary of the trust shall have the power, by written instrument, approved in writing by the then independent trustee of the trust if the beneficiary is then under the age of fifty, and delivered to one of the then trustees, on or before the effective date of the appointment set forth in the instrument (that must be during the continuance of the trust but may relate to a specified event, such as the time of the child's death), to appoint any part or all of the net assets contained in the separate trust on the effective date to or among or for the benefit of any one or more of Grantor's father's lineal descendants, in any amounts or proportions, provided, however, that the power shall not be exercisable to any extent for the benefit of the Grantor, of such beneficiary, of the beneficiary's estate, of the beneficiary's creditors, or the creditors of the beneficiary's estate. Any appointment under the power may be made for any present, future, vested or contingent estate(s), either outright or in trust, and, if in trust, with one or more such persons as beneficiaries and with the trustee(s), the dispositive and administrative provisions, the newly created powers of appointment, and with or without lawful spendthrift provisions, all as specified in the instrument of appointment (either directly or by reference to a separate trust instrument, even one previously created by another).

Section 1.6 of the Trust Agreement provides for the distribution of the assets of a trust after a beneficiary's death. Section 1.6(a) provides that as of the time of the death of the beneficiary of a separate trust, all of the net assets then contained in its separate undistributed income account, if any, to the extent not effectively appointed under Section 1.5 of the Trust Agreement, shall be distributed to those of the beneficiary's lineal descendants who are then living per stirpes. All of the beneficiary's children, however, shall be deemed to be then deceased and, provided, further, that, if there are no lineal descendants of the beneficiary then living (other than those of the first generation), the disposition of whatever assets are then contained in the separate undistributed income account shall instead be governed in all respects by Section 1.6(b). Section 1.6(b) provides that as of the end of the sixtieth day after the first anniversary of the death of the beneficiary of the separate trust, the trust shall terminate and all of its then remaining net assets, to the extent not effectively appointed under Section 1.5, shall be distributed as follows: (1) to those of the beneficiary's lineal descendants who are then living, per stirpes, or, if there be none then living, (2) to those of the beneficiary's parents' lineal descendants who are lineal descendants of the Grantor and who are then living, per stirpes, provided, however, that if there shall then be in existence a trust for any designated distributee, his or her entire share shall be transferred and added to the corpus of the trust and thereafter held, managed, and disposed of in the same manner as the corpus to which the share is added and provided further, that, if there shall then be no trust in existence for the primary benefit of any designated descendant, his or her share shall continue in trust as the corpus of a

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separate and distinct trust of which the descendant shall be the primary beneficiary, the provisions of each separate trust being set forth in Section 1.7 of the Trust Agreement.

Section 3.1(b) of the Trust Agreement provides that all other provisions to the contrary notwithstanding, each and every trust coming into existence, either directly or indirectly or by the exercise of any power contained herein, shall, unless earlier terminated, terminate on the day prior to the expiration of twenty-one years after the death of the last survivor of those now living persons whose names appear in the instrument (other than as witnesses and notaries) and those of their respective lineal descendants who were living on Date 2 (prior to Date 1 when certain other family trusts were created).

Section 4.1 of the Trust Agreement provides, in part, that the absolute right and power, at any time(s), with or without cause, to remove any then acting family trustee of a particular trust or trusts, is given to the first in order of the following-listed persons (indicated as having removal rights with respect to the particular trust involved) who is not then deceased or incapacitated: (a) Grantor, as to each and every trust, (b) Grantor's spouse, as to each and every trust, (c) the then beneficiary or beneficiaries (as that term is used in Section 1.4) of the trust, acting by majority vote if there be more than one, each beneficiary being entitled to one vote. Furthermore, the then acting family trustee of each separate trust shall have the right and power at any time or times to remove, by the foregoing procedure, the then acting independent trustee of that separate trust, provided the family trustee sets forth in the notice of removal some reasonable cause for the removal such as that repeated administrative or investment errors are being made by the trustee, a personality conflict has arisen with the trustee (or the trust officer assigned), that the trustee's fees are not competitive, or that the trust would be more conveniently administered in another city, or the trustee's services are being adversely affected by age, health, or unavailability.

Section 4.2 of the Trust Agreement provides that in the event of any vacancy at any time or times occurring in the office of the independent trustee with respect to any trust, whether caused by resignation, removal, incapacity, death or otherwise, the vacancy in office shall be promptly filled by a bank or trust company that is located in some state or country that recognizes trusts, that has trust powers and that has a combined capital and surplus in excess of \$1,000,000 (no substantial portion of which is directly or indirectly owned by Grantor or any beneficiary hereunder), or by an individual who is sui juris, who is experienced in business and finance or who is an attorney experienced in the trust and tax fields, and who is neither the grantor nor a beneficiary nor related to the grantor or to any beneficiary in any of the following classifications: spouse, ancestor, lineal descendant, brother or sister, nor an employee of the grantor or of any beneficiary or of any corporation, firm or partnership in which the grantor or any beneficiary is an executive or has stock or other holdings that are significant from the viewpoint of control. The selection and appointment of the successor independent trustee shall be made, in the following order of preference, (a) by the then acting family trustee of the trust, or if there is none, (b) by the person then having the right under Section 4.1 to remove a family trustee with respect to the

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affected trust, or if there is no person then having the right, (c) by the then beneficiary or beneficiaries (as that term is used in Section 4.1 of the Trust Agreement) of the trust, acting by majority vote if there be more than one, each beneficiary being entitled to one vote, the vote to be cast by written ballot signed by the beneficiary, and for these purposes, if a beneficiary is not then sui juris, his or her parent, spouse or legally appointed guardian, in that order of preference, shall take such action in his or her place and stead. Unless the appointment is made by the original family trustee, the successor independent trustee shall not be an individual but must be a bank or trust company. Furthermore, upon the death or incapacity of the original family trustee, if the then acting independent trustee is an individual, he or she shall be deemed to have resigned and a properly qualified bank or trust company shall be appointed as successor independent trustee of the trust in the manner provided in this section.

Section 4.3 of the Trust Agreement provides that in the event of any vacancy at any time occurring in the office of family trustee with respect to any trust, whether caused by resignation, removal, incapacity, death or otherwise, the person then, and subsequently at any specific point in time involved, having the right under Section 4.1 to remove a family trustee of the trust may, at any subsequent time, select and appoint an individual who is sui juris and who has attained at least twenty-five years of age (including the person making the appointment) to fill the vacancy in office, but in the absence of or until an appointment is made, the independent trustee of the trust shall act alone as the sole trustee of the trust. Whenever under the provisions of the instrument one or more separate trusts are created out of the assets of a then existing trust, the then acting trustee(s) of the existing trust shall automatically be the initial trustee(s) of the new separate trust(s).

On Date 3, 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 4. 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 4 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.

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On Date 4, 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 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

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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.

The current independent trustee proposes to distribute the assets of Trust 2 and Trust 3 to two new trusts, Trust 2A and Trust 3A, respectively. Unless otherwise specified, the new trust agreement provisions are identical to each other except for the name of the primary beneficiary. Child 2 will be the beneficiary of Trust 2A, and Child 3 will be the beneficiary of Trust 3A. Each new trust will terminate on or before the date on which its counterpart original trust was required to terminate under its applicable perpetuities period provision. In addition, the current trustees will, via the new trust agreements, update each trust's administrative provisions and revise each trust's trustee requirements, trustee selection, and trustee succession provisions to better provide for the long-term management of the trusts. Finally, the current trustees desire to appoint Trust Company to serve as an independent trustee.

On Date 5, the trustees filed a Petition for Instructions with Probate Court in State 2. Probate Court is the court having jurisdiction over the trusts that are the subject of this private letter ruling. The Petition for Instructions sought confirmation of the independent trustee's authority to exercise his discretionary power of distribution in favor of further trusts. On Date 6, Probate Court issued two separate orders (one for each trust) contingent upon a private letter ruling from the Internal Revenue Service regarding the estate and generation-skipping transfer tax consequences of the exercise. The orders stated that Trust Agreement grants the independent trustee a discretionary power of distribution that may be exercised in favor of one or more new trusts created by him for the benefit of all or any one of the permissible distributees under the original trusts, equally or unequally. The orders further provided that the power may be exercised by the independent trustee without either beneficiary consent or court approval if the new trusts do not benefit anyone who was not a current or future permissible distributee under the relevant original trust and the terms of the new trust do not extend the duration of the trusts beyond the perpetuities period of the relevant original trust.

Section 1.2(a) of the Trust Agreement will provide that during the remainder of the primary beneficiary's lifetime (and until the trust's subsequent actual termination) any part or all of the net income and/or principal of the trust may be distributed, in the sole discretion of its independent trustee(s), to (or for the benefit of) any one or more of

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the following permissible distributees: (I) the primary beneficiary, (II) any one or more of the primary beneficiary's descendants, (III) any entity then owned and controlled by no one other than one or more of the then permissible distributees described in paragraph (a), and (IV) any trust (that is at the time a "qualified distributee trust" as defined in the trust technical provisions) for the primary benefit of any one or more of the individual permissible distributees, even a newly created trust. The foregoing discretion to make or withhold distributions of income and principal to the permissible distributees is an absolute discretion to be exercised solely in accordance with the independent trustee's(s') own best judgment. Moreover, (1) at the end of each tax year, any income that is not distributed shall be added to principal and (2) to provide greater equality among the primary beneficiary's descendants, all distributions made to a child of the primary beneficiary after attaining age twenty-three, as well as certain distributions made before that age (for example, to get married, acquire a home, etc.) if so designated by the independent trustee(s), are to be treated as advances on that child's ultimate share of the trust (as are all distributions to that child's children).

Section 1.2(b) of the Trust Agreement will provide that with the approval of the then independent trustee(s) of the trust if the beneficiary is under age fifty, the primary beneficiary shall have the power to appoint any part or all of that trust's assets (as well as the assets of the hereafter described interim trust), effective at any time during the affected trust's existence, to (or in trust for) any one or more of the descendants of Grantor and/or their spouses, but the power shall not be used to benefit the primary beneficiary, the primary beneficiary's estate, or the creditors of either.

Section 1.3 of the Trust Agreement will provide for the distribution of the assets of each trust on the death of the primary beneficiary in the event that the primary beneficiary has not directed otherwise by exercise of power of appointment under Section 1.4. Section 1.3(a) will provide that while the deceased primary beneficiary has two or more children, at least one of whom is under age twenty-three, the trust's remaining assets shall continue in trust as the "interim trust" in that beneficiary's name having the provisions set forth in Section 1.5 of 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 the office of corporate independent trustee 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 other must be occupied by a corporate independent trustee. Section 3.1(c) will provide that the third trustee position will be the "family trustee" office.

Section 3.2(d) of the 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.

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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 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 the removal that must meet the criteria and, in general, be of the kind described in Section 3.2(d)(1)(B), except for sub-section 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, with respect to Trust 2A and Trust 3A, the right to remove the family trustee of each (with or without cause) is held by the top control list person (or persons) who shall be the first in order and is "eligible" to act. Section 3.2(f)(1)(A) will provide that first level of the control list includes Child 2 (or her designees) or Child 3 (or her designees), as the case may be, if she or a descendant of hers is the primary beneficiary of the trust. Section 3.2(f)(1)(B) will provide that the second level of the control list includes Child 2 or Child 3'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)(C) will provide that the third level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(D) will provide that the fourth 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)(E) 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,

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provided that each most senior generation descendant is a descendant of Grantor (or the descendant's or descendants' designees). 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 that when only two people hold a right or power with respect to a trust, the two must act together unanimously.

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 Trust Agreement, 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 corporate independent trustee of any trust, or (ii) the office of the individual independent trustee 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 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 such 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

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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 the corporate independent trustee position 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 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” “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

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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.” Section 3.4(b)(3) will provide the individual may not be either (A) a donor to or a current or contingent beneficiary of that trust nor related to the donor or beneficiary who is then living in any of the following classifications - spouse, ancestor, lineal descendant, brother, or sister - nor (B) an employee of a donor or current or contingent beneficiary of that 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 may by stipulation require that, under certain circumstances the office of individual 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 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)(3) of the Trust Technical Provisions will provide that all other provisions of the agreement to the contrary notwithstanding, Trust 2 and Trust 3 shall, unless earlier terminated, terminate on the “rule against perpetuities required termination date” applicable to that trust. The required termination date on which these 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 the lineal descendants of Patriarch X, Trustee 2, and the lineal descendants of each who were living on Date 2, namely: Grantor, Trustee 2, Measuring Life 1, Measuring Life 2,

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Child 1, Child 2, Child 3, Measuring Life 3, Measuring Life 4, Measuring Life 5, and Measuring Life 6.

On Date 7, Probate Court issued one order affecting each of the trusts that are the subject of this private letter ruling. The order approves 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 7. 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. The Date 7 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. In addition, the order creates an additional independent trustee office and appoints Trustee 3 to fill the office. If a vacancy shall occur in a co-independent trustee office during the trust restructuring period, that 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 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 the 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

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appoint any other person including himself, the decedent is considered as having 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 not 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 the trusts. Section 3.2 of the Trust Agreement and Technical Provisions governing both trusts will authorize the removal of the independent trustee(s) by either the family trustee (that may include the grantor or a beneficiary of the trusts) or the other independent trustee (that may include Trust Company). Section 3.3 of the Trust Agreement and Technical Provisions will describe how vacant trustee positions will be filled. Section 3.3(b) of the Trust Agreement will provide that if a vacancy occurs in the office of corporate independent trustee (or in the office of individual 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 the Trust

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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 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

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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 grantor, 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 the discretionary decisions 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 grantor 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 the trusts.

The combination of the firewall provisions in the revised Trust Agreement, Trust Technical Provisions, and the Trust Company Bylaws preclude a donor to any of the trusts from having the retained dominion and control as contemplated by §§ 2036 or 2038. Grantor, therefore, will not 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 Trust Agreement. In addition, although Grantor may be a shareholder in and participate in the daily activities of Trust Company, he is precluded from participating in discretionary distribution decisions made by Trust Company with respect to trusts created under Trust Agreement. 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 § 2038 or 2038.

Furthermore, the combination of provisions also preclude a beneficiary 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 Trust Agreement. 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 Trust Agreement. Accordingly, based on the facts submitted and the

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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 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 Trust Agreement are generation-skipping transfer trusts because they provide for distributions to one or more generations of beneficiaries below the grantor's generation. Date 1 is prior to September 25, 1985, and Trust 2 and Trust 3 were irrevocable on September 25, 1985. Trust 2 and Trust 3, therefore, are exempt from the generation-skipping transfer tax pursuant to § 26.2601-1(b)(1)(i). Grantor exercised a non-general power of appointment over two trusts of which he was a beneficiary and appointed assets to Trust 3. It has been represented that the trusts over which the powers were exercised were exempt from the generation-skipping transfer tax under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i). Thus, the additions to Trust 3 did not cause any change in the status of Trust 3 as exempt from the generation-skipping transfer tax. It has been represented that, with respect to any additions made to Trust 2 and Trust 3 after September 25, 1985, other than as a result of the exercised powers of appointment, the transfers qualified for the gift tax annual exclusion. In addition, transfers made to the trusts prior to April 1, 1988, were deemed to have a zero inclusion ratio under § 2642(c) then in effect. 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 implementation of the trust restructuring plan, each trust 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), which 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 this paragraph (b)(1)(v)(B)(2), the 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 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends the vesting, absolute ownership or 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)(A) provides, in part, that the distribution of trust principal from an exempt trust to a new trust will not cause the new trust to be subject to the provisions of chapter 13 if (1) the terms of the governing instrument of the exempt trust authorize distributions to the new trust, without the consent or approval of any beneficiary or court; and (2) the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in the trust 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 the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of twenty-one years, plus, if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(E) provides examples illustrating the application of paragraph (b)(4). In each example, the trust established in 1980 was irrevocable for purposes of § 26.2601-1(b)(1)(ii) and there have been no additions to any trust after September 25, 1985. Example 1 illustrates a trustee's power to distribute principal authorized under a trust instrument. In 1980, Grantor established an irrevocable trust

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(Trust) for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate twenty-one years after the death of the last child of A to die who was alive at the time Trust was executed. Trust will terminate on the death of A, at which time the remaining principal will be distributed to A's issue, per stirpes. In 2002, the trustee distributes part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate twenty-one years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C, per stirpes. The terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest 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 Trust, extending beyond any life in being at the date of creation of Trust plus a period of twenty-one years, plus if necessary, a reasonable period of gestation. Therefore, neither Trust nor the new trust will be subject to the provisions of chapter 13 of the Internal Revenue Code.

The present transaction is similar to that in Example 1 of § 26.2601-1(b)(4)(i)(E). With respect to Trust 2 and Trust 3 the independent trustee has the discretion to make the proposed distributions in the trust agreements. Furthermore, the terms of the new trust agreements will not extend the time for vesting that was provided for in the original trusts because the individuals used as measuring lives for the new trusts were included as measuring lives under the original trust. Therefore, the new trusts will terminate at the same time the original trusts were to terminate.

With respect to the special powers of appointment exercised in favor of Trust 3, the powers were created in irrevocable trusts that are not subject to chapter 13 under § 26.2601-1(b)(1). In addition, the exercise of the powers did not postpone or suspend the vesting, absolute ownership or power of alienation beyond the period prescribed in § 26.2601-1(b)(1)(v)(B).

With respect to Trust 2 and Trust 3, the terms in the new trust agreements do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property in contradiction to § 26.2601-1(b)(4)(A)(2) or § 26.2601-1(b)(1)(v)(B). We therefore conclude that after the implementation of the proposed trust restructuring plan, Trust 2A and Trust 3A will each have an inclusion ratio of zero for purposes of the generation-skipping transfer tax.

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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
Acting Branch Chief, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy of this Letter for § 6110 purposes