

Internal Revenue Service

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In Re:

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-115628-16

Date:
October 12, 2016

Legend

Grantor	=
<u>A</u>	=
Son	=
<u>B</u>	=
Granddaughter	=
<u>C</u>	=
GGC1	=
GGC2	=
GGC3	=
GGC4	=
Trust	=

Trust A	=
Trust B	=
Trustee	=
Settlement	=
Agreement	

Court	=
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Petition =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

a =

b =

c =

d =

e =

f =

g =

State =

State Statute 1 =

State Statute 2 =

State Statute 3 =

Dear :

This letter responds to a letter dated May 10, 2016, from your authorized representative, and subsequent correspondence, in which you request rulings on the gift, estate, and generation-skipping transfer (GST) tax consequences of a proposed declaratory judgment.

On Date 1, a date before October 21, 1942, Grantor and Grantor's spouse, A, established Trust, an irrevocable trust, for the primary benefit of Son.

Article I, section 1 of Trust provides that Trust will be administered by one Trustee (Trustee), in conjunction with an Advisory Board. Currently, the Advisory Board consists of Trustee and C, the spouse of Grantor's granddaughter, Granddaughter.

Article III, section 3 provides that the term "Beneficiary" applies not only to Son but to all his successors to a beneficial interest under the Trust Agreement.

Article IV, section 4 provides that Beneficiary may receive from time to time during the life of Trust, such portions of the net profits accruing from time to time to Trust, as Trustee, acting with the advice and consent of the Advisory Board, may see fit to pay over and deliver to Beneficiary. Article III, section 1 provides that the Beneficiary will have no right to the corpus of Trust and that the Beneficiary shall have no right with respect to Trust other than to receive distributions of net earnings awarded him by Trustee with the consent of the Advisory Board and the right of distribution of the trust estate made by Trustee at the termination of Trust.

Article IV, section 3 provides that Trust shall continue until the death of Son and for twenty-one years after the date of his death. At the end of said period of time, Trustee shall proceed to wind up the affairs, liquidate the assets, and distribute the same among the then existing beneficiaries, but until such time no beneficiary shall ever be entitled to the dissolution, termination, or disruption of said trust, or to maintain suits, in courts of law or equity, against said estate, its trustees, or its property, or business operations of any kind, it being hereby distinctly understood and agreed that full and complete title, ownership, management, direction, control and dominion is vested in Trustee and his successors, subject only to provisions with respect to the Advisory Board, for said term of years.

Article III, section 3 provides that at the time of the death of Beneficiary, his equitable interest in the trust estate, unless disposed of otherwise by the Beneficiary, will pass to and vest in his heirs in accordance with the laws of descent and distribution then in force, applicable to the equitable interest of Beneficiary in the trust estate.

In Year, Son commenced litigation in which he alleged, among other things, that Trustee had abused Trustee's discretionary authority by withholding income from Son. At the time, Son had four children, including Granddaughter. On Date 2, Trustee, Son, Son's spouse, B, and Son's lineal descendants, or *guardians ad litem* for Son's then current and future lineal descendants, entered into Settlement Agreement, subject to approval by Court. On Date 4, Court issued a judgment approving Settlement Agreement and ordered, among other things, that: (1) Trust is partitioned into Trust A and Trust B, (2) both Trust A and Trust B use Trust as their trust instrument, (3) Trust B consists of one-fourth of Trust and is designated for the benefit of Son, B, Granddaughter and Granddaughter's heirs, (4) Son will release his power of appointment in Article III, section 3, with respect to Trust A and Trust B, (5) B will release any power of appointment in Article III, section 3, that she may have over Trust A and Trust B, (6) Granddaughter, C, and Granddaughter's children will release their rights in Trust A, and (7) Son's other three children will release their rights in Trust B, individually, and on behalf of their children. This private letter ruling pertains only to Trust B.

Section 2.12 of Settlement Agreement provides that Trust B will distribute to Son and all subsequent beneficiaries, annually by April 15, a sum of at least a percent of the

minimum b percent net profits (Annual Distribution). Section 2.13 provides that, following Son's death, Trustee will distribute to B, if she survives Son, her statutory portion of the Annual Distribution from Trust B for the period of her life, but not to exceed twenty-one years from Son's death. Section 2.13 further provides that the portion of the Annual Distribution to B arises from her position as one of Son's heirs at law, as provided under Article III, section 3. Section 2.14 provides that pursuant to the terms of Trust, neither the trustees of Trust A nor Trust B shall have the right to distribute the corpus of either trust to any beneficiary.

On Date 3, Son released, renounced and disclaimed the power of appointment granted to him under Article III, section 3, and B released, renounced, and disclaimed any power of appointment granted to her under Article III, section 3. On Date 4, such releases were offered to the Court and admitted to evidence.

Subsequently, on Date 5, B executed a Memorandum of Disclaimer (B's Disclaimer). B's Disclaimer provides that B irrevocably and without qualification disclaims and refuses to accept all of her rights, title, interests, and powers in and to certain interests in and powers with respect to Trust B. B's Disclaimer provides further that she disclaims: (1) c percent of the income interest in Trust B (i.e., the right to receive discretionary distributions) pursuant to Article III, section 3, (2) d percent of the remainder interest in Trust B to which she would be entitled, pursuant to Article III, section 3, and (3) any power of appointment created under Trust, as it relates to the above-disclaimed income and remainder interests. B's Disclaimer also provides that B intends for B's Disclaimer to cover the interests in and powers with respect to Trust B to which B would be entitled under any circumstances including, but not limited to, as an heir of Son. B's Disclaimer includes an acknowledgement before a notary public and a receipt of delivery to Trustee dated Date 6. Date 6 is a date less than nine months after Date 4.

On Date 7, Granddaughter also executed a Memorandum of Disclaimer (Granddaughter's Disclaimer). Granddaughter's Disclaimer provides that Granddaughter irrevocably and without qualification disclaims and refuses to accept all of her rights, title, interests, and powers in and to certain interests in and powers with respect to Trust B. Granddaughter's Disclaimer provides further that she disclaims: (1) e percent of the income interest in Trust B (i.e., the right to receive discretionary distributions) pursuant to Article III, section 3, and (2) f percent of the remainder interest in Trust B to which she would be entitled, pursuant to Article III, section 3. Granddaughter's Disclaimer also provides that Granddaughter intends for Granddaughter's Disclaimer to cover the interests in and powers with respect to Trust B to which Granddaughter would be entitled under any circumstances including, but not limited to, as an heir of Son. Granddaughter's Disclaimer includes an acknowledgement before a notary public and a receipt of delivery to Trustee dated Date 7. Date 7 is a date less than nine months after Date 4. Granddaughter's Disclaimer was executed in accordance with State law. It is represented that Granddaughter has not accepted the disclaimed interests or any benefits of the

disclaimed interests and, as a result of Granddaughter's Disclaimer, the disclaimed interests passed without any direction from Granddaughter and did not pass to the person making the disclaimer.

On Date 8, Son died, survived by his spouse, B, four children, including Granddaughter, grandchildren and great-grandchildren. Currently, with respect to Trust B, the term "Beneficiary," as used in Article III, section 3, includes B, Granddaughter, and Granddaughter's four children, GGC1, GGC2, GGC3 and GGC4 (collectively, Beneficiaries). Pursuant to Article IV, Trust B will terminate 21 years after the date of Son's death on Date 8. Accordingly, Trust B will terminate on Date 11.

After Son's death, Trustee realized that, when Trust, B's Disclaimer, Granddaughter's Disclaimer, and Settlement Agreement are read together, ambiguities exist regarding the identity of the beneficiaries of Trust B following Son's death, the proper standard for making distributions of income from Trust B, how the remaining estate of Trust B should be distributed upon termination, and how a Beneficiary's interest should pass in the event the Beneficiary is not then living. On Date 9, pursuant to State Statutes 1 and 2, Trustee filed a petition seeking a declaratory judgment to resolve these ambiguities. An amended petition (Petition) was filed on Date 10. The parties to the Petition have agreed to and approved a proposed declaratory judgment (Declaratory Judgment) that declares the rights and legal relations with respect to Trust B.

Declaratory Judgment provides, among other things, that Son's release of his power of appointment and B's release of her power of appointment were effective on Date 4. Declaratory Judgment also clarifies that Granddaughter's Disclaimer of e percent of the income interest in Trust B relates to the total income (i.e., the g percent minimum under the Settlement Agreement and the discretionary distributions under Trust). Thus, to give effect to Granddaughter's Disclaimer of e percent of the income interest, Declaratory Judgment includes a limitation on the discretionary distribution so that Granddaughter may not receive more than f percent of distributions of excess net profits for the year. Declaratory Judgment also clarifies that: (1) the g minimum distribution amount required under Settlement Agreement must be distributed each year; and (2) to the extent net profits exceed that amount, Trustee may make discretionary distributions under Trust. To take into consideration the current economic environment, Declaratory Judgment also adds distribution schedules for years in which net profits are less than b percent. In addition, Declaratory Judgment identifies the proper beneficiaries and distribution standards following Son's death and clarifies the applicable statute of descent and distribution for determining Son's heirs under Trust (State Statute 3). Finally, Declaratory Judgment clarifies that an heir of Son will not be treated as a Beneficiary to the extent he or she disclaims (or has disclaimed) his or her interest in Trust B, and that the interest of a Beneficiary passes to that Beneficiary's heirs (not to Son's heirs) if the Beneficiary dies prior to termination of Trust B.

State Statute 1 provides that a person interested in the administration of a trust, including a trustee, may have a declaration of rights or legal relations in respect to the

trust to: (1) ascertain any class of heirs or others; (2) to direct the trustees to do or abstain from doing any particular act in their fiduciary capacity; or (3) to determine any question arising in the administration of the trust, including questions of construction of writings.

State Statute 2 provides that a statutory probate court has jurisdiction over all proceedings by a trustee and all proceedings concerning trusts, including proceedings to (1): construe a trust instrument; (2) determine the law applicable to a trust instrument; (3) determine the powers, responsibilities, and duties of a trustee; (4) ascertain beneficiaries; (5) make determinations of fact affecting the administration, distribution, or duration of a trust; and (6) determine a question arising in the administration or distribution of a trust, among others.

State Statute 3 provides that if a person who dies intestate leaves a surviving spouse, the estate, other than a community estate, to which the person had title descends and passes as provided by this section. If the person has one or more children or a descendant of a child: (1) the surviving spouse takes one-third of the personal estate; and (2) two-thirds of the personal estate descends to the person's child or children, and the descendants of a child or children.

It is represented that no additions, actual or constructive, have been made to Trust or Trust B after September 25, 1985.

Rulings Requested

1. The rendering of Declaratory Judgment will not cause Trust B to lose its exempt status for purposes of the GST tax under § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations.

2. The rendering of Declaratory Judgment will not cause a taxable gift of any portion of Trust B for federal gift tax purposes by any of the Beneficiaries.

3. The rendering of Declaratory Judgment will not cause inclusion of any portion of Trust B in the gross estate of any Beneficiary whose death occurs prior to the termination of Trust B.

4. The power of appointment of each Beneficiary over his or her respective share of Trust B is a general power of appointment created before October 22, 1942, the release or lapse of which is nontaxable for federal estate and gift tax purposes with respect to the Beneficiary.

5. Granddaughter's Disclaimer is a qualified disclaimer under § 2518, does not create transfers subject to federal gift tax, will not cause any part of the disclaimed interests to be includible in Granddaughter's gross estate for federal estate tax purposes, and will not create transfers subject to the GST tax.

Law and Analysis

Ruling Request 1

Section 2601 of the Internal Revenue Code imposes a tax on every GST. The term GST is defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a), the GST tax is generally applicable to GSTs made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the GST tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such 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)(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 under § 26.2601-1(b) will not cause the trust to lose its exempt status. Thus, 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 gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(C) provides that a judicial construction of a governing instrument to resolve an ambiguity in the terms of the instrument or to correct a scrivener's error will not cause an exempt trust to be subject to the provisions of chapter 13, if: (1) The judicial action involves a bona fide issue; and (2) The construction is consistent with applicable state law that would be applied by the highest court of the state.

Section 26.2601-1(b)(4)(i)(E), Example 3, considers a situation where, in 1980, Grantor established an irrevocable trust for the benefit of Grantor's children, A and B, and their issue. The trust is to terminate on the death of the last to die of A and B, at which time the principal is to be distributed to their issue. However, the provision governing the termination of the trust is ambiguous regarding whether the trust principal is to be distributed *per stirpes*, only to the children of A and B, or *per capita* among the children, grandchildren, and more remote issue of A and B. In 2002, the trustee files a construction suit with the appropriate local court to resolve the ambiguity. The court issues an order construing the instrument to provide for *per capita* distributions to the children, grandchildren, and more remote issue of A and B living at the time the trust terminates. The court's construction resolves a bona fide issue regarding the proper interpretation of the instrument and is consistent with applicable state law as it would be interpreted by the highest court of the state. Therefore, the trust will not be subject to the provisions of chapter 13.

In *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967), the Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Court concluded that the decision of a state trial court as to an underlying issue of state law should not be controlling when applied to a federal statute. Rather, the highest court of the state is the best authority on the underlying substantive rule of state law to be applied in the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be state law after giving "proper regard" to the state trial court's determination and to relevant rulings of other courts of the state. In this respect, the federal agency may be said, in effect, to be sitting as a state court.

In the present case, Trust was irrevocable on September 25, 1985. It has been represented that no additions, actual or constructive, have been made to Trust or Trust B after that date. In a prior private letter ruling, the Internal Revenue Service (IRS) ruled that Settlement Agreement did not cause Trust, Trust A, or Trust B to lose its grandfathered exempt status for purposes of the GST tax. Subsequently, Trustee recognized ambiguities exist when Trust, B's Disclaimer, Granddaughter's Disclaimer, and Settlement Agreement are read together. For example, although Trust authorizes discretionary distributions of net income to Beneficiaries, Settlement Agreement is silent on whether Trustee is authorized to make discretionary distributions in addition to the minimum net income distributions agreed upon in Settlement Agreement. Thus, Trust, when read with Settlement Agreement, could be interpreted to allow only distributions of the minimum net income or it could be interpreted to also allow discretionary distributions of net income in excess of the minimum net income of Trust B. In addition, Trust uses a loop approach in which "heirs" are substituted as Beneficiary. Thus, when read with Settlement Agreement, Trust could be interpreted to refer only to Son's heirs or it could be interpreted to refer to the heirs of each person who becomes a Beneficiary of Trust B.

These possible constructions, among others, created bona fide issues regarding the dispositive provisions of Trust. Trustee filed the Petition to resolve these issues. The Declaratory Judgment applies applicable State law and construes Trust, when read with Settlement Agreement, B's Disclaimer, and Granddaughter's Disclaimer, in a manner that is consistent with applicable State law that would be applied by the highest court of State.

Accordingly, based on the facts presented and the representations made, we rule that the rendering of Declaratory Judgment will not cause Trust B to lose its grandfathered exempt status under § 26.2601-1(b)(1).

Ruling Request 2

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

Section 2511 provides that the gift tax shall apply 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 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed to be a gift, and is included in computing the amount of gifts made during the calendar year.

In this case, Declaratory Judgment is a judicial construction that resolves ambiguities that exist when Trust, B's Disclaimer, Granddaughter's Disclaimer, and Settlement Agreement are read together. Beneficiaries will have the same interest in Trust B before and after the Declaratory Judgment is rendered. Because the beneficial interests of Beneficiaries are the same, no transfer of property will be deemed to occur as a result of the rendering of Declaratory Judgment.

Accordingly, based on the facts submitted and the representations made, we conclude that the rendering of Declaratory Judgment will not cause any Beneficiary to make a gift of any portion of Trust B for gift tax purposes.

Ruling Request 3

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

Section 2036(a) provides that the value of the gross estate shall include the value of 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 the decedent has retained for life or for any period not ascertainable without reference to the decedent's 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 2037(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 after September 7, 1916, 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, 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 (but in the case of a transfer made before

October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds five percent of the value of such property.

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 enjoyment thereof was subject at the date of death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person to alter, amend, revoke, or terminate, or where any such power is relinquished during the three-year period ending on the date of the decedent's death.

Sections 2036 through 2038 include in a decedent's gross estate property only to the extent that the decedent has made a transfer of the property during his life. In this case, Beneficiaries did not transfer property to Trust or Trust B. In addition, because the beneficial interests of Beneficiaries are the same, before and after Declaratory Judgment is rendered, no transfer of property will be deemed to occur as a result of the rendering of Declaratory Judgment.

Accordingly, based on the facts presented and the representations made, we rule that the rendering of Declaratory Judgment will not cause inclusion, under §§ 2036 through 2038, of any portion of Trust B in the gross estate of any Beneficiary whose death occurs prior to the termination of Trust B.

Ruling Request 4

Section 2041(a)(1) 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 a general power of appointment created on or before October 21, 1942, is exercised by the decedent (A) by will, or (B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

Section 2041(b)(1) defines the term "general power of appointment" as a power exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or creditors of the decedent's estate, except that – (A) A power to consume, invade, or appropriate property for the benefit of the decedent which 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, and (B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides that the term “power of appointment” includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations.

Section 20.2041-1(c)(1) provides that a power of appointment is not a general power if by its terms it is either – (a) 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, or (b) Expressly not exercisable in favor of the decedent or his creditors, or the decedent’s estate or the creditors of his estate.

Section 20.2041-1(e) provides that a power of appointment created by an inter vivos instrument is considered as created on the date the instrument takes effect. The power is not treated as created at some future date merely because it is not exercisable on the date the instrument takes effect or because the identity of its holders is not ascertainable until after the date the instrument takes effect.

Section 20.2041-2(d) provides that a failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of the power is not considered to be an exercise of a general power of appointment. The phrase “a complete release” means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the decedent completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half.

Section 2514(a) provides that an exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing the power; but the failure to exercise the power or the complete release of the power shall not be deemed an exercise thereof.

Section 25.2514-2(c) of the Gift Tax Regulations provides that a failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of the power is not considered to be an exercise of a general power of appointment. The phrase “a complete release” means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power.

Section 25.2514-1(e) provides that a power of appointment created by an inter vivos instrument is considered as created on the date the instrument takes effect.

In this case, the Trust was executed on a date prior to October 21, 1942. Under Article III, section 3, each Beneficiary of Trust B is granted a testamentary general power of appointment to appoint the income and corpus of Trust B. Specifically, Article III, section 3 provides that “[a]t the time of the death of the Beneficiary, his

equitable interest in said Trust Estate *unless disposed of otherwise by said Beneficiary*, shall pass to and vest in his heirs in accordance with the laws of descent and distribution then in force, applicable to the equitable interest of such Beneficiary in said Trust Estate. (The term ‘Beneficiary’ applies not only to Son but to all his successors to beneficial interests under this trust).” (Emphasis added.) This language is not limited by an ascertainable standard nor is the power exercisable only in conjunction with another person. Further, the Beneficiary may exercise the power in favor of the Beneficiary, the Beneficiary’s estate, the Beneficiary’s creditors, or the creditors of the Beneficiary’s estate because the Article does not expressly provide otherwise.

Accordingly, based on the facts presented and the representations made, we rule that the testamentary power of appointment of each Beneficiary over his or her respective share of Trust B is a general power of appointment created before October 21, 1942. Further we rule that for purposes of § 2514(a) and § 2041(a)(1), the release or lapse of a Beneficiary’s general power of appointment is not deemed to be an exercise of a general power of appointment. Accordingly, the release or lapse of the testamentary power of appointment is not subject to federal gift or estate tax.

Ruling Request 5

Section 2518(a) provides that, if a person makes a qualified disclaimer of an interest in property, the estate, gift, and GST tax provisions will apply to that interest as if the interest had never been transferred to the person.

Section 2518(b) provides that the term “qualified disclaimer” means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of legal title to the property to which the interest relates not later than the date which is nine months after the later of the date on which the transfer creating the interest in such person is made, or the day on which such person attains age 21; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer and passes either to the spouse of the decedent or to a person other than the person making the disclaimer.

Section 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of § 2518(b) shall be treated as a qualified disclaimer of such portion of the interest. Section 2518(c)(2) provides that a power with respect to property is treated as an interest in that property.

Section 25.2518-1(b) provides that if a person makes a qualified disclaimer as described in § 2518(b) and 25.2518-2, for purposes of the federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer.

Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift. Similarly, the value of a decedent's gross estate for purposes of the federal estate tax does not include the value of property with respect to which the decedent, or the decedent's executor or administrator on behalf of the decedent, has made a qualified disclaimer.

Section 25.2518-2(b)(1) provides that a disclaimer is a qualified disclaimer only if it is in writing. The writing must identify the interest in property disclaimed and be signed by the disclaimant or the disclaimant's legal representative. Section 25.2518-2(b)(2) provides that the written disclaimer must be delivered to the transferor of the interest, the transferor's legal representative, the holder of the legal title of the property to which the interest relates, or the person in possession of the property.

Section 25.2518-2(c)(1) provides that a disclaimer is a qualified disclaimer only if it is delivered no later than the date which is nine months after the later of the date on which the transfer creating the interest in the disclaimant is made, or the day on which the disclaimant attains age 21.

Section 25.2518-2(c)(3) provides that the nine month period for making a disclaimer generally is to be determined with reference to the transfer creating the interest in the disclaimant. In the case of a general power of appointment, the holder of the power has a nine month period after the transfer creating the power in which to disclaim. If a person to whom an interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a nine-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax.

Section 25.2518-3(a)(1)(i) provides that the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property. In general, each interest in property that is separately created by the transferor is treated as a separate interest.

Section 25.2518-3(a)(1)(iii) provides that a power of appointment with respect to property is treated as a separate interest in the property and the power of appointment with respect to all or an undivided portion of the property may be disclaimed independently from any other interests separately created by the transferor in the property.

Section 25.2518-3(b) provides that a disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in

the property and must extend over the entire term of the disclaimant's interest in the property and in other property into which such property converted.

In this case, Son was the sole Beneficiary of Trust B during his life. Under Article III, section 3, Son had a general power to appoint the income and corpus of Trust B. If Son did not exercise this power, the power would lapse at his death and Son's heirs under the laws of descent and distribution would succeed him as beneficiaries of the trust. An heir of Son who, thus, became a Beneficiary (as the term is defined in Trust) has the same power of appointment and the same income interest as Son had and also has a remainder interest contingent on surviving Son for 21 years.

Son released his power of appointment on Date 4. On Date 4, Granddaughter's income interest in Trust B and Granddaughter's power of appointment over her interests in Trust B were contingent upon surviving Son. In addition, Granddaughter's remainder interest in Trust B was contingent on surviving 21 years after Son's death.

Under § 25.2518-2(c)(3), Granddaughter's contingent income and remainder interests in Trust B, as well as her contingent power to appoint these interests, are deemed, for purposes of § 2518, to have been created in Granddaughter when Son released his power of appointment over Trust on Date 4. Under § 25.2518-2(c)(3), if Granddaughter made a qualified disclaimer of her interests in Trust B (or an undivided portion of these interests) then the interests (i.e., the income, remainder, and powers attributable to these disclaimed interests) are treated as if they have never been transferred to Granddaughter for federal estate and gift.

In this case, Granddaughter's Disclaimer specified that she disclaimed e percent of her income interest and f percent of her remainder interest in Trust B. Granddaughter also disclaimed the portion of her testamentary power of appointment with respect to such income and remainder interests. Further, Granddaughter disclaimed any interest in Trust B as an heir at law of Son in such disclaimed interests. Granddaughter's Disclaimer was received by Trustee on Date 7, a date less than nine months after Date 4. It is represented that Granddaughter had not accepted the disclaimed interests or any benefits of the disclaimed interests and, as a result of Granddaughter's Disclaimer, the disclaimed interests passed without any direction from Granddaughter and did not pass to the person making the disclaimer.

Accordingly, based on the facts presented and the representations made, we rule that Granddaughter's Disclaimer is a qualified disclaimer under § 2518, and the disclaimer did not create transfers subject to federal gift tax, will not cause any part of the disclaimed interests in Trust B to be includible in Granddaughter's gross estate for federal estate tax purposes, and will create a transfer subject to the GST tax.

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.

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 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.

Sincerely,

Lorraine E. Gardner

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of letter
Copy for § 6110 purposes

cc: