

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-133128-08

Date:

August 04, 2008

Trust =

A =

B =

State =

D1 =

Dear :

This responds to a letter dated March 7, 2007, and subsequent correspondence, submitted on behalf of Trust by Trust's authorized representative, requesting a ruling under §§ 671 and 675 of the Internal Revenue Code.

The information submitted states that on D1, A created and funded Trust, an irrevocable trust, for the benefit of A's children. In accordance with State law, A and all beneficiaries of Trust will execute a modification to Trust's governing instrument to provide that A shall have the power, solely in a nonfiduciary capacity and without the approval of any person in a fiduciary capacity, to reacquire any property contained in Trust by substituting other property of equivalent value.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Sections 673 through 678 specify the circumstances under which the grantor or a person other than the grantor is treated as the owner of a portion of a trust.

Section 675(4)(C) provides that the grantor shall be treated as the owner of any portion of a trust in respect of which a power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. The term "power of administration" includes a power to reacquire the trust corpus by substituting other property of an equivalent value.

Section 1.675-1(a) provides, in general, that the grantor is treated as the owner of any portion of a trust if under the terms of the trust instrument or circumstances attendant on its operation administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiaries of the trust.

Section 1.675-1(b)(4)(iii) provides that the circumstances which may cause administrative controls to be considered exercisable primarily for the benefit of the grantor include the existence of certain powers of administration exercisable in a nonfiduciary capacity by any nonadverse party without the approval or consent of any person in a fiduciary capacity. The term "powers of administration" includes a power to reacquire the trust corpus by substituting other property of an equivalent value. If a power is not exercisable by a person as trustee, the determination of whether the power is exercisable in a fiduciary or a nonfiduciary capacity depends on all the terms of the trust and the circumstances surrounding its creation and administration.

Based solely on the facts and representations submitted, we conclude that the circumstances surrounding the administration of Trust will determine whether the power of administration is exercisable in a fiduciary or nonfiduciary capacity. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the Internal Revenue Service office where the returns are filed. Therefore, we cannot determine at this time whether A will be treated as the owner of Trust, or any portion thereof, under § 675(4)(C). Provided that the circumstances indicate that the power of administration is exercisable in a nonfiduciary capacity, A will be treated as the owner of Trust under §§ 671 and 675.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

We express no opinion regarding the federal gift tax consequences of the proposed transaction. Specifically, we are not ruling on whether the proposed modifications will have any gift tax consequences and whether any future substitutions of assets will have any gift tax consequences. In addition, we express or imply no opinion as to whether future activities involving A, Trust, and the substitution power are the same as or substantially similar to the transaction of interest identified in Notice 2007-73. However, A and Trust are alerted to the potential obligation under § 1.6011-4 to disclose any future transactions that are the same or substantially similar to the transactions identified in Notice 2007-73 and to the potential for penalties for the failure to disclose such transactions.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes