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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-105955-03

Date: AUGUST 11, 2004

Re:

LEGEND

Grantor =

Son =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

A =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =

Trust 10 =
 Trust 11 =
 Trust 12 =
 Trust 13 =
 Trust 14 =
 Trust 15 =
 Trust 16 =
 Trust 17 =
 Trust 18 =
 Trust 19 =
 Trust 20 =
 Trust 21 =
 Trust 22 =
 Trust 23 =
 Trust 24 =
 Date 1 =
 Date 2 =
 Date 3 =
 Charity =
 State =
 Trustee 1 =
 Trustee 2 =
 Trustee 3 =

Dear _____ :

This responds to your letter dated June 18, 2004, and prior correspondence, requesting rulings on the generation-skipping transfer (GST), gift, and estate tax consequences resulting from the proposed division of several trusts.

You represent the facts to be as follows. Grantor established Trust 1 through Trust 15 (collectively referred to as the "Original Trusts") on Date 1, by executing five separate trust agreements. Date 1 is prior to September 25, 1985. Each trust was funded with cash. All fifteen trusts are irrevocable and all trusts' terms are substantially identical. Grantor did not retain any powers of appointment or rights with respect to any of the trusts. Grantor died on Date 2. Trustee 1, Trustee 2, and Trustee 3 ("Trustees") are currently serving as the co-trustees of the Original Trusts. The Trustees are not beneficiaries of any of the Original Trusts. Trustee 1 and Trustee 3 are not related to any beneficiaries of the Original Trusts. Trustee 2 was formerly married to a beneficiary (a grandchild of Grantor) of several of the Original Trusts and is the father of two adult beneficiaries of several of the Original Trusts.

In accordance with Article III, § 3.1 and Article VII, § 7.1 of each Original Trust, the trustees are authorized, in their sole discretion, to distribute income and principal entirely or disproportionately to or among any one or more of the beneficiaries named in Article I of each trust, without any subsequent adjustment, as the trustees deem to be in the best interests of the beneficiaries.

Article I of each Original Trust agreement designates various named individual(s) and, in some cases, categories of their family members as its beneficiaries. Specifically, Article I of each Original Trust names one or more of Grantor's grandchildren (Grandchild 1, Grandchild 2, and Grandchild 3) who are Son's children, and A, who is Grantor's former daughter-in-law, as beneficiaries. Nine of the Original Trusts also name as beneficiaries under Article I descendants, children and/or spouses of the Grantor's grandchildren, and/or the spouses of such descendants. Specifically, Grantor's grandchildren's descendants are named as beneficiaries in Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, and Trust 12. The spouses of Grantor's grandchildren's descendants are named in Trust 10, Trust 11, and Trust 12. Grantor's grandchildren's spouses and children are named in Trust 13, Trust 14, and Trust 15. Finally, the beneficiaries of the Original Trusts are not limited to a single one of the Grantor's grandchildren or the family of a single one of the Grantor's grandchildren, except in Trust 7, Trust 8, and Trust 9.

Under Article III, § 3.2 of the Original Trusts, a designated beneficiary of each separate Original Trust, after attaining the age of 35, may appoint, during his or her lifetime all or any part of the separate trust estate to or for the benefit of any one or more of the descendants of the Grantor, subject to the provisions of Article IX, § 9.4 (discussed below). If there is more than one beneficiary of a separate trust who has attained the age of 35, the power is exercisable jointly by those beneficiaries, or by the survivor.

Regarding the powers of appointment described in Article III, § 3.2, Article IX, § 9.1 of each Original trust provides:

Manner of Exercise. In addition to, and not in limitation of the rights accorded by law to a donee of a power of appointment, the donee of a power of appointment granted hereunder with respect to any separate trust may exercise such power by making appointments from the trust estate in cash or kind, including a direction to the Trustee to distribute specific property, outright to, or to a trustee or trustees to hold in trust for the exclusive benefit of, any one or more of the objects of the power, and may impose lawful spendthrift restrictions and other lawful conditions upon any appointment, provided that no one other than an object of the power is benefited [sic] thereby. The donee may also exercise any power of appointment in any one or more of the following ways: (i) by creating life estates for any one or more objects of the power with remainders to others of

said objects, (ii) by appointing to or for the benefit of children, grandchildren or more remote descendants even though the parents, grandparents, or ancestors of such appointees are living, (iii) by creating in any object of the power either a general or a limited power of appointment, and (iv) by substituting (but only if said donee himself shall not thereafter be a beneficiary of such trust) or by adding any one or more objects of the power as beneficiaries of such trust. The donee of a lifetime power of appointment hereunder may exercise such power at any time or from time to time by an instrument in writing delivered to the Trustee during the lifetime of such donee.

In all cases when a power is held by one of the Grantor's grandchildren, who is, himself or herself, a descendant of the Grantor in whose favor the power would otherwise be exercisable, the power is restricted by the following language in Article IX, § 9.4 of the applicable trust as follows:

Restrictions on Exercise of Limited Powers of Appointment. Except as otherwise provided herein by express reference to this section 9.4, no power of appointment granted hereunder shall be exercised or exercisable to any extent in favor of the donee of such power, or the estate, the creditors or the creditors of the estate of said donee, or to discharge or satisfy a legal obligation of said donee, or for the pecuniary benefit of said donee,

Trust 13, Trust 14, and Trust 15 provide that the power held by A is exercisable only with the approval of the trustees. In Date 3, prior to September 25, 1985, Grandchild 1, Grandchild 2, and Grandchild 3 executed certain instruments entitled "Renunciation, Release and Reduction of Limited Power of Appointment" with respect to the powers of appointment each held under the Original Trusts. These instruments provide that the original power holders would continue to retain the powers of appointment, but that subsequent exercises must be approved in writing by the then trustee or trustees of the trust to which the power relates.

Article V of each Original Trust provides:

Notwithstanding any provision of this Agreement to the contrary, no separate trust, nor any share or portion thereof, shall be held in trust for longer than, nor shall any estate or trust created by the exercise of any power of appointment hereunder terminate later than: (a) twenty-one (21) years after the date of death of the last to die of a group consisting of the Grantor, the spouse of the Grantor, all persons who are mentioned by name herein, the spouse of such persons, all those descendants of the Grantor and of said mentioned persons who are living at the date of execution of [the respective Original Trust], and the spouse of each of such descendants, or (b) pursuant to [the applicable state] law, sixty (60) years from the date of execution of this Agreement, whichever date shall later occur.

Article V further provides that if, upon the expiration of the period described above:

. . . [an Original Trust], or any share or portion thereof, is still held in trust, or any estate has not terminated, . . . [such] trust, or share or portion thereof, or such estate, shall vest in and immediately be distributed to the beneficiary thereof or to the beneficiaries in equal shares.

Article VIII, § 8.1 of each Original Trust grants the trustee certain powers, in addition to the powers conferred by applicable state law. Specifically, § 8.1(o) grants the trustee the power:

(o) to transfer any property which may at any time form a part of the trust estate into a separate trust, including without limitation a land trust, for the benefit of the transferor-trust or of any beneficiary thereof, the trustee of such transferee-trust to be the transferor-Trustee or any other person, persons, corporation or combination thereof, upon such terms and conditions as the transferor-Trustee shall determine and from time to time to withdraw all or a portion of such property or the proceeds thereof or to revoke such a transferee-trust; . . .

Article X, § 10.3 provides:

Beneficiary as Trustee. Except with respect to any powers of appointment or as may be expressly provided herein to the contrary, no Trustee shall have any voice, determination or vote relating to any discretionary distributions of the income or principal of any separate trust constituted hereunder either to or for the benefit of said Trustee when said Trustee shall be a beneficiary of such trust or to or for the benefit of any person whom said Trustee is legally obligated to support, when such distribution is or would be a full or partial discharge of such obligation.

You represent that no additions, actual or constructive, have been made to any of the Original Trusts.

PROPOSED TRANSACTION

The parties propose to restructure and consolidate the Original Trusts along family lines. The Trustees of the Original Trusts will exercise their discretionary powers under Article VIII, § 8.1(o) of the Original Trust Agreements to fund nine new trusts ("Proposed Trusts"), as follows:

Trust 16 for the benefit of Grandchild 2, Trust 17 for the benefit of Grandchild 3, and Trust 18 for the benefit of Grandchild 1 (referred to collectively as the “Proposed Grandchild’s Trusts”);

Trust 22 for the benefit of Grandchild 2 and her children, Trust 23 for the benefit of Grandchild 3 and his children, and Trust 24 for the benefit of Grandchild 1 and her children (referred to collectively as the “Proposed Great-Grandchildren’s Trusts”);

Trust 19 for the benefit of Grandchild 2 and her descendants, Trust 20 for the benefit of Grandchild 3 and his descendants, and Trust 21 for the benefit of Grandchild 1 and her descendants (referred to collectively as the “Proposed Descendants’ Trusts”).

Trustees will serve as the co-trustees of Trusts 16-24. Subject to §§ 2.1 and 2.9 of the Proposed Trusts, described below, the co-trustees can designate their own successors as replacements, which can be trust beneficiaries.

The Trustees propose to distribute the assets from the Original Trusts to the new trusts in the following manner:

Trust 1 and Trust 4 will be distributed to Trust 16
 Trust 2 and Trust 5 will be distributed to Trust 17
 Trust 3 and Trust 6 will be distributed to Trust 18
 Trust 7 and Trust 12 will be distributed to Trust 19
 Trust 8 and Trust 10 will be distributed to Trust 20
 Trust 9 and Trust 11 will be distributed to Trust 21
 Trust 13 will be distributed to Trust 22
 Trust 14 will be distributed to Trust 23
 Trust 15 will be distributed to Trust 24

You represent that all of the terms of the Proposed Trusts within each subcategory (the Proposed Grandchild’s Trusts, the Proposed Great-Grandchildren’s Trusts, and the Proposed Descendants’ Trusts) are substantially identical regarding the distributive scheme, and in all other respects, except for the names of the individual beneficiaries and the source of the funds distributed to each trust. All of the Proposed Trusts will be governed by the laws of State. The three subcategories are discussed below.

Proposed Grandchild’s Trusts (Trust 16, Trust 17, and Trust 18)

Section 1.1 of each Proposed Grandchild's Trust grants broad authority to its trustees to pay or apply part, all or none of the net income and principal to or for the benefit of the Grantor's Grandchild named therein, either outright or in trust.

Section 1.2 provides that, upon the death of the Grantor's Grandchild for whom the trust is established, the trust shall terminate and the trust assets shall be added to such Grandchild's Proposed Descendants' Trust, and be subject to all of the terms thereof, including the exercise by such Grandchild of his or her testamentary power of appointment as set forth in the Proposed Descendants' Trust.

Section 2.1 provides that there will at all times be three trustees and at least two trustees who are not descendants of Son. Under § 2.9, a beneficiary acting as a trustee may not participate in the exercise of a discretionary power to distribute assets of any trust of which he or she is a beneficiary or in the exercise of any power under § 3.1.33 (regarding S corporation stock) that could affect the distribution of income of a trust of which he or she is a beneficiary.

Proposed Great-Grandchildren's Trusts (Trust 22, Trust 23, and Trust 24)

Section 1.1 of each Proposed Great-Grandchildren's Trust grants broad authority to its trustees to pay or apply part, all or none of the net income and principal to or for the benefit, either outright or in trust, of the Grantor's Grandchild named therein and his or her children, or any of them.

Section 1.2 provides that, upon the death of the Grantor's Grandchild named therein, the trust shall terminate and the trust assets shall be added to such Grandchild's Proposed Descendant's Trust, and be subject to all of the terms thereof, including the exercise by such Grandchild of his or her testamentary power of appointment as set forth in the Proposed Descendants' Trust.

Section 2.1 provides that there will at all times be three trustees and at least two trustees who are not descendants of Son. Under § 2.9, a beneficiary acting as a trustee may not participate in the exercise of a discretionary power to distribute assets of any trust of which he or she is a beneficiary or in the exercise of any power under § 3.1.33 (regarding S corporation stock) that could affect the distribution of income of a trust of which he or she is a beneficiary.

Proposed Descendants' Trusts (Trust 19, Trust 20, and Trust 21)

Section 1.1 of each Proposed Descendants' Trust grants broad authority to its trustees to pay or apply part, all or none of the net income and principal to or for the benefit, either outright or in trust, of the Grantor's Grandchild named therein and his or her descendants, or any of them.

Section 1.2 provides that the named Grandchild has a testamentary power: (1) to appoint part, all or none of the trust assets to one or more exempt organizations that qualify under § 501(c)(3) of the Code, in such amounts or proportions and subject to such terms and conditions as he or she shall appoint; and, (2) to the extent not so exercised, up to two thirds of the unappointed corpus may be appointed in shares within the same Proposed Descendants' Trust for the benefit any of the descendants of Grantor's Son, excluding Son's children, and excluding the estate, the creditors, and the creditors of the estate of such Grandchild. To the extent not so appointed in the preceding sentence, § 1.2 provides that the corpus of each Proposed Descendants' Trust will be divided per stirpes, upon the death of the Grantor's Grandchild whose descendants are beneficiaries of the trust, into separate subtrusts for the surviving descendants of that Grantor's Grandchild. Any portion allocated to a descendant beneficiary and held as a separate subtrust for the benefit of the descendant beneficiary and his or her descendants will be known as the "Descendant Beneficiary's Trust." Each descendant beneficiary for whom a Descendant Beneficiary's Trust is created under § 1.2, by appointment or by default of appointment, will also possess a testamentary limited power of appointment over that separate trust.

Section 8.6 provides that, if not sooner terminated pursuant to the preceding provisions of the trust, each trust created under the Proposed Descendants' Trust (including each trust created by the exercise of a power of appointment granted under the trust agreement) terminates not later than the expiration of twenty-one (21) years after the death of the last to die of Grantor's descendants who were living on Date 1. Upon such termination, the remaining assets shall be distributed to the named Grandchild's then living descendants per stirpes. Any remaining assets not effectively disposed of thereby shall be distributed to Son's then living descendants per stirpes, excluding Son's children, or if none, to Grantor's then living descendants per stirpes, excluding her children, or if there are none to Charity.

Section 2.1 provides that there will at all times be three trustees and at least two trustees who are not descendants of Son. Under § 2.9, a beneficiary acting as a trustee may not participate in the exercise of a discretionary power to distribute assets of any trust of which he or she is a beneficiary or in the exercise of any power under § 3.1.33 (regarding S corporation stock) that could affect the distribution of income of a trust of which he or she is a beneficiary.

You have requested the following rulings:

1. The Original Trusts (Trust 1 through Trust 15) and appointments, transfers and distributions from, and terminations of interests in, each trust, are wholly exempt from GST tax under the effective-date rules for pre-September 25, 1985, irrevocable

trusts, as set forth in § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and in § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations.

2. The Original Trust Trustees' declaration, by exercise of their discretionary powers under Article VIII, § 8.1(o) of the Original Trusts (Trust 1 through Trust 15), of the nine proposed trusts (Trusts 16 through Trust 24), and the transfer by assignment of the entire assets of the Original Trusts to the nine proposed trusts, and the resulting termination of the Original Trusts, will not cause the Original Trusts, nor such terminations thereof, terminations of interests therein, and transfers therefrom, to be subject to the GST tax.

3. The discretionary powers provided to the Original Trust Trustees in Article VIII, § 8.1(o) are not general powers of appointment within the meaning of §§ 2514 or 2041.

4. The testamentary powers of appointment granted to each of Grandchild 1, Grandchild 2, and Grandchild 3 by § 1.2 of the Proposed Descendants' Trusts (Trust 19 through Trust 21) of which he or she is a beneficiary to appoint assets to charity, and/or to reallocate shares by appointment for the benefit of any of Son's descendants (including descendants of the respective Grantor's Grandchild) within the respective continuing Proposed Descendants' Trust, is not a general power of appointment within the meaning of § 2041.

5. Upon and after the creation and funding of the proposed trusts (Trust 16 through Trust 24), so long as no actual or constructive additions are made to a respective Proposed Trust, including without limitation modifications to the terms of the respective trust that amount to constructive additions, each of Trust 16 through Trust 24 will be treated for purposes of the GST tax as a continuation of the respective GST exempt Original Trusts from which assets were transferred, and accordingly each of Trust 16 through Trust 24 will be exempt from GST tax, and transfers and distributions from, and terminations thereof and of interests in each such trust, including termination of the Proposed Grandchild's Trusts and the Proposed Great-Grandchildren's Trusts and the transfer of all their assets to the Proposed Descendants' Trusts on the deaths of their respective Grantor's Grandchild made pursuant to the Proposed Trusts' terms, will be exempt from GST tax and will not subject any of the Proposed Trusts to the GST tax.

6. Upon and after establishing and funding of the Proposed Trusts (Trust 16 through Trust 24), so long as no actual or constructive additions are made to a respective Proposed Trust, including without limitation modifications to the terms of the respective trust that amount to constructive additions, the exercise by a Grantor's Grandchild of the testamentary power of appointment under § 1.2 of the Proposed Descendants' Trust of which the Grantor's Grandchild is a beneficiary to appoint assets to charity, and/or to reallocate shares by appointment for the benefit of any of Son's

descendants (including descendants of the respective Grantor's Grandchild) within the respective continuing Proposed Descendants' Trust, in accordance with the terms of such § 1.2, will be exempt from GST tax and will not cause the GST tax to apply to such exercise of the power of appointment nor to the transfers, distributions, terminations of interests and reallocations of trust shares in the Proposed Descendants' Trust that result from the exercise, nor to the respective Proposed Descendants' Trust, including without limitation the Descendant Beneficiary's Trusts within the Proposed Descendants' Trust that will be created upon the death of the beneficiary Grantor's Grandchild, nor to the other Proposed Trusts from which assets pour over into such Proposed Descendants' Trust at the death of the respective beneficiary Grantor's Grandchild, nor to appointments, transfers, or distributions from, or terminations of interests in, such respective Proposed Descendants' Trust, and such Proposed Descendants' Trust and the reallocated shares held within it as Descendant Beneficiary's Trusts will continue to be treated in their entirety, for purposes of the GST tax, as a continuation of the respective GST exempt Original Trusts from which assets were appointed to such Proposed Descendants' Trust and the other Proposed Trusts having the same Beneficiary Grantor's Grandchild, in accordance with the proposed restructure plan.

GENERATION-SKIPPING TRANSFER TAX ISSUES -- RULINGS NOS. 1, 2, 5, AND 6

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

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

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of section 1001.

Under § 26.2601-1(b)(4)(i)(A), 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 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 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 21 years, plus if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(E), Example 1, illustrates a situation in which Trust, that is otherwise exempt from the GST tax, authorizes the trustee to distribute income and principal, at the trustee's discretion, for the benefit of A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A corporate fiduciary is trustee and has the discretion to distribute all or part of the income to one or more of a group consisting of A, A's spouse or A's issue. The trustee is also authorized to distribute all or part of the principal to one or more trusts for the benefit of A, A's spouse, or A's issue. Any trust established must terminate 21 years after the death of the last child of A to die who was alive at the time the 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. The terms of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In 2002, the trustee distributed part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate 21 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 example concludes that, under the facts presented, the terms 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 any 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 21 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.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided in § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of the addition

except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12.

Section 26.2601-1(b)(1)(v)(B) provides a special rule for certain powers of appointment. This section provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) will not be treated as an addition to a trust if (1) such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b)(1), and (2) in the case of an exercise, such 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 21 years. 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)(1)(v)(D), Example 4, addresses the exercise of a power of appointment in favor of another trust. Under the terms of Trust 1, the trustee is required to distribute the entire income annually to T's child, C, for life, then to T's grandchild, GC, for life. GC has the power to appoint any or all of the trust assets to another trust, Trust 2. The terms of Trust 2 provide that the trustee is to pay income to T's great grandchild, GGC, for life. Upon GGC's death, the remainder is to be paid to GGC's issue. GGC was alive when Trust 1 was created. C died on April 1, 1986, and on July 1, 1987, GC exercised the power of appointment. The example concludes that GC's exercise of the power does not subject future transfers from Trust 2 to tax under chapter 13 because the exercise of the power in favor of Trust 2 does not 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 1, extending beyond the life of GGC (a beneficiary under Trust 2 who was in being at the date of creation of Trust 1) plus a period of 21 years. The result would be the same if Trust 2 had been created after the effective date of chapter 13.

Section 26.2601-1(b)(1)(v)(D), Example 6, describes a situation where prior to the effective date of chapter 13, GP established an irrevocable trust under which the trust income was to be paid to GP's child, C, for life. C was given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder was to pass to charity. C died on February 3, 1995, survived by a child who was alive when GP established trust. C exercised the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2064, (80 years from the date the trust was created), or the death of C's child plus 21 years. C's exercise of the power is a constructive addition to the trust because the exercise may extend the trust for a period longer than the permissible periods of either the life of C's child (a life in being at the creation of the trust) plus 21 years or a term not more than 90 years measured from the creation of the trust. On the other

hand, if C's exercise of the power could extend the trust based only on the life of C's child plus 21 years or only for a term of 80 years from the creation of the trust (but not the later of the two periods) then the exercise of the power would not have been a constructive addition to the trust.

In Example 7, the facts are the same as in Example 6 above, except that local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2064, whether or not C's child predeceases that date by more than 21 years. C's exercise is not a constructive addition to the trust because C exercised the power in a manner that cannot postpone or suspend vesting, absolute ownership, or power of alienation for a term of years that will exceed 90 years. The result would be the same if the effect of C's exercise is either to extend the term of the trust until 21 years after the death of C's child or to extend the term of the trust until the first to occur of May 15, 2064 or 21 years after the death of C's child.

In the present case, the Original Trusts were irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to any of the trusts after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the Original Trusts are not subject to the GST tax.

Further, regarding the proposed distribution of the corpus of the Original Trusts to Trust 16 through Trust 24 pursuant to Article VIII, § 8.1(o) of the Original Trust agreement, Trust 16 through Trust 24, or any trust created pursuant to the exercise of a power of appointment granted under the terms of those trusts, must terminate no later than 21 years after the death of the last to die of Grantor's descendant's living on Date 1. Thus, the terms of Trust 16 through Trust 24 satisfy the requirements of § 26.2601-1(b)(4)(i)(A).

As discussed below, the powers of appointment granted in the Proposed Descendants' Trusts are not general powers of appointment within the meaning of § 2041. In addition, under the terms of the Proposed Descendants' Trusts, any trust created by the exercise of a power of appointment terminates not later than the expiration of twenty-one (21) years after the death of the last to die of Grantor's descendants who were living on Date 1, the date the Original Trusts were created. Thus, the powers of appointment may not be exercised in a manner that will 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 Original Trusts, extending beyond any life in being at the date of creation of the Original Trusts, plus 21 years.

Therefore, based on the facts submitted and representations made, we conclude as follows:

1. The Original Trusts (Trust 1 through Trust 15) and appointments, transfers and distributions from, and terminations of interests in, each trust, are wholly exempt from GST tax under the effective-date rules for pre-September 25, 1985, irrevocable trusts, as set forth in § 1433(b)(2)(A) of the Act and in § 26.2601-1(b)(1)(i).

2. The Original Trust Trustees' declaration, by exercise of their discretionary powers under Article VIII, § 8.1(o) of the Original Trusts (Trust 1 through Trust 15), of the nine Proposed Trusts (Trust 16 through Trust 24), and the transfer by assignment of the entire assets of the Original Trusts to the nine Proposed Trusts, and the resulting termination of the Original Trusts, will not cause the Original Trusts, nor such terminations thereof, terminations of interests therein, and transfers therefrom, to be subject to the GST tax.

3. Assuming no actual or constructive additions are made to a respective trust, including without limitation modifications to the terms of the respective trust that amount to constructive additions, the Proposed Trusts (Trust 16 through Trust 24) will be exempt from GST tax, and transfers and distributions from, and terminations thereof and of interests in each such trust, including termination of the Proposed Grandchild's Trusts and the Proposed Great-Grandchildren's Trusts and the transfer of all their assets to the Proposed Descendants' Trusts on the deaths of their respective Grantor's Grandchild made pursuant to the Proposed Trusts' terms, will be exempt from GST tax and will not subject any of the Proposed Trusts to the GST tax.

4. The exercise by Grandchild 1, Grandchild 2, or Grandchild 3 of the testamentary power of appointment under § 1.2 of the Proposed Descendants' Trust of which the Grantor's Grandchild is a beneficiary to appoint assets to charity, and/or to reallocate shares by appointment for the benefit of any of Son's descendants (including descendants of the respective Grantor's Grandchild) within the respective continuing Proposed Descendants' Trust will be exempt from GST tax and will not cause the GST tax to apply to the exercise of the power of appointment nor to the transfers, distributions, terminations of interests and reallocations of trust shares in the Proposed Descendants' Trust that result from the exercise. Further, the exercise of the power will not cause the GST tax to apply to the respective Proposed Descendants' Trust, including, without limitation, the Descendant Beneficiary's Trusts within the Proposed Descendants' Trust that will be created upon the death of Grandchild 1, Grandchild 2, and Grandchild 3, respectively, nor to the other Proposed Trusts from which assets pour over into such Proposed Descendants' Trust at the death of the respective Grandchild, nor to appointments, transfers, or distributions from, or terminations of interests in, such respective Proposed Descendants' Trust. Such Proposed Descendants' Trust and the reallocated shares held within it as Descendant Beneficiary's Trusts will continue to be treated as exempt from GST tax.

POWERS OF APPOINTMENT -- RULING REQUEST NOS. 3 AND 4

Section 2041(b)(1)(A) provides that the term “general power of appointment” means 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, except that 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 is not deemed a general power of appointment.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that a power of appointment is not a general power of appointment 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 creditors of decedent’s estate.

Under 2514(b), the exercise or release of a general power of appointment created after October 21, 1942, is deemed a transfer of property by the individual possessing such power. Under § 2514(c), the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power (“the possessor”), his estate, his creditors, or the creditors of his estate. 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 possessor or his creditors, or the possessor’s estate or the creditors of his estate, or (b) expressly not exercisable in favor of the possessor or his creditors, or the possessor’s estate, or the creditors of his estate. Section 25.2514-1(c)(1) of the Gift Tax Regulations.

In the present case, Article X, § 10.3 of the Original Trusts prevents a trustee from participating in any vote or determination relating to any discretionary distributions of income or principal for his or her benefit (or for the benefit of any person who the trustee is legally obligated to support when the distribution is or would be a discharge of the trustee’s support obligation) if the trustee is a beneficiary of the trust. With respect to the testamentary powers of appointment granted under § 1.2 of the Proposed Descendants’ Trusts, the trust instruments limit the exercise of the power such that a powerholder may not exercise the power in favor of himself or herself, their creditors, their estates, or the creditors of their estates. Thus, neither power is a general power of appointment because the powers may not be exercisable in favor of the powerholder, the powerholder’s estate, the powerholder’s creditors, or the creditors of the powerholder’s estate.

Therefore, based on the facts submitted and representations made, we conclude as follows:

1. The discretionary powers provided to the Original Trust Trustees in Article VIII, § 8.1(o) are not general powers of appointment within the meaning of §§ 2514 or 2041.

2. The testamentary powers of appointment granted to each of Grandchild 1, Grandchild 2, and Grandchild 3 in §1.2 of the Proposed Descendants' Trust of which he or she is a beneficiary to appoint assets to charity, and/or to reallocate shares by appointment for the benefit of any of Son's descendants (including descendants of the respective Grantor's Grandchild) within the respective continuing Proposed Descendants' Trust, is not a general power of appointment within the meaning of §§ 2041.

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statements executed by the appropriate parties. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

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

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

Sincerely yours,

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes