

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200408015**

Release Date: 2/20/04

Index Number: 2516.00-00, 1041.00-00,
682.00-00, 2036.06-00,
2702.01-00

Person To Contact:

ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04 – PLR-131768-02

Date: NOVEMBER 12, 2003

LEGEND:

Settlor	=
Wife	=
Daughter 1	=
Daughter 2	=
Son	=
Stepdaughter	=
Son-In-Law 1	=
Son-In-Law 2	=
Son-In-Law 3	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
County Court	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
Company	=
Trust	=
Judgment	=
Order	=
Modification	=
State Law	=

PLR-131768-02

Dear _____ :

This is in response to your May 21, 2002 letter and other correspondence requesting a ruling concerning the federal income, gift, and estate tax consequences of the creation of a trust.

You have requested the following rulings:

1. The funding of Trust pursuant to the Judgment qualifies for nonrecognition of gain pursuant to either section 1001 or 1041 of the Internal Revenue Code.
2. The Modification will not cause recognition of gain or loss on the transfer to Trust pursuant to either section 1001 or 1041.
3. Section 682 governs the income taxation of Trust.
4. The funding of Trust pursuant to the Judgment, to the extent of the annuity interest of Wife, will constitute a transfer for full and adequate consideration under section 2516, and the only gift will be the gift of Trust remainder to Settlor's children.
5. No portion of Trust will be included in the gross estate of Settlor under sections 2036, 2038, 2039, and 2041.
6. If Trust is created, Settlor will not have a "retained interest" for purposes of section 2702.
7. No portion of Trust will be included in the estate of Settlor if he is the trustee of Trust under sections 2036, 2038, 2039, and 2041.
8. No portion of Trust will be included in the gross estate of Wife under sections 2036, 2038, 2039, and 2041.

The facts submitted are as follows:

On Date 1, Settlor and Wife were married. Due to irreconcilable differences Settlor and Wife separated on Date 2. On Date 3, Settlor and Wife dissolved their marriage and entered into a Judgment of Dissolution (Judgment) in County Court to settle and determine all existing personal and property rights of Settlor and Wife with respect to each other.

PLR-131768-02

The Judgment provides, in part, that Settlor will pay Wife \$a per month in the form of spousal support until the death of Wife. Upon the occurrence of a triggering event, including the sale of Company, Settlor shall either purchase an annuity contract or establish a trust for the benefit of Wife. In the event that Settlor elects to establish an irrevocable trust, Settlor shall deposit into such trust sufficient funds to generate sufficient income for the payment of spousal support payments to Wife for the remainder of her life. The trustee of the trust shall thereafter make the monthly payments to Wife in satisfaction of Settlor's spousal support obligations under the Judgment. In the event trust funds are insufficient to generate sufficient income to pay Wife the required spousal support, the principal of the trust shall be invaded to make up the difference.

After Date 3, Settlor began paying \$a per month in spousal support to Wife. On Date 4, Company was sold. Settlor and Wife's representatives met to discuss changes required by the Judgment as a result of Company's sale. Ultimately it was determined that Trust would be created and funded with \$b in municipal bonds. Before funding the Trust, Settlor and Wife requested this ruling. In the interim, on Date 5, County Court issued an Order that Settlor will pay Wife \$c per month on a non-taxable basis, instead of \$a per month on a taxable basis, in the form of spousal support until Settlor establishes a trust for the benefit of Wife. "Non-taxable basis" was defined to mean not taxable to Wife and not deductible to Settlor for federal tax purposes.

On Date 6, the Order was modified by County Court in a stipulated order (Modification). The Modification provides that upon the issuance of this private letter ruling, Settlor shall cause Trust to pay Wife \$c per month on a non-taxable basis until her death. Upon acknowledgment by Trust of the instruction to pay \$c per month to Wife on a non-taxable basis until her death, and its agreement to do so, and upon acknowledgment of the full funding of Trust as provided therein, Settlor shall be relieved of all further personal liability for the payment of spousal support to Wife. Upon acknowledgment by Trust of the instruction to pay \$c per month to Wife on a non-taxable basis until her death, and its agreement to do so, all orders in any other document pertaining to Settlor's obligation to pay spousal support to Wife and/or his obligation to provide security for the payment of spousal support to Wife shall immediately terminate. Wife executed the stipulation consenting to be bound by the terms of the Modification.

Settlor proposes to fund Trust pursuant to the terms of Modification. Section 1.3 of Trust Agreement provides that the purpose of Trust is to satisfy Settlor's spousal support obligations to Wife and to provide a distribution of the remainder to Settlor's children on the death of Wife.

Section 1.4 provides, in part, that the principal of Trust shall consist solely of municipal bonds which are presently in the form of The Municipal Bond Portfolio.

Section 3.1 provides that Trust is irrevocable. Section 3.2 provides that notwithstanding any other provision of Trust, Settlor shall not have: (a) any right to the

PLR-131768-02

possession or enjoyment of the principal or income of the trust estate, or any right, either alone or in conjunction with any other person, to designate the persons who will possess or enjoy the principal or income of the trust estate; (b) any right to vote (directly or indirectly) any shares of stock of a controlled corporation that may be part of the trust estate; (c) any power or direction in any capacity, either alone or in conjunction with any other person, to alter, amend, revoke, or terminate the enjoyment of the trust estate; (d) any power that is exercisable in favor of Settlor, Settlor's estate, Settlor's creditors, or the creditors of Settlor's estate, or any other power that would constitute a general power of appointment; (e) any incidents of ownership in any insurance policy that is part of the trust estate; (f) any power or discretion that would cause the trust estate, or any part of the trust estate, to be included in the gross estate of Settlor; and (g) any power or discretion that would cause the trust estate, or any part of the trust estate, to be included in the gross estate of Wife.

Section 4.1 provides that until the death of Wife, the Trustee shall pay to or apply for the benefit of Wife for each taxable year of the trust an annuity amount equal to \$d. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. Payment of the annuity amount shall not be made by the issuance of a note, other debt instrument, option, or similar financial arrangement. However, it shall be acceptable for the payment of the annuity to be made by an in kind payment in the form of municipal bonds (or other assets in the event it is wise to no longer use municipal bonds because of, for example, changes in the tax law although this is a very unlikely event.) In the event any such payment in kind is made, the bonds (or other assets) distributed to Wife must be immediately saleable by her for the value established by the Trustee on an established securities market. The Trustee shall make no distribution to any beneficiary other than Wife during her life.

Section 4.2 provides that the Trustee shall pay the annuity amount in monthly installments on the first day of each month. Section 4.4 provides that commutation of Wife's interest is prohibited.

Section 4.5 provides, in part, that Settlor intends that the trust be treated as a grantor trust for income tax purposes. Settlor, without consent of any fiduciary of this trust, shall have the power at any time to reacquire the trust corpus by substituting other property of an equivalent value provided, however that this power shall not apply to the right to reacquire (or acquire) any insurance policy on the life of Settlor. The power is exercisable by Settlor solely in a nonfiduciary capacity, and no fiduciary duty imposed upon the Trustee or any other person may be asserted as a defense to the exercise of the power. On the death of Wife, in the event Settlor is still alive, the grantor trust status shall apply to the entire trust. On the death of Settlor, the grantor trust status shall terminate.

Section 4.6 provides that upon the death of Wife, the Trustee shall divide the trust property into as many shares of equal value as are necessary to create one share for each child of Settlor who is then living and one share for each child of Settlor who is not then living but leaves issue then living. Each share created for such child who is

then living, other than Son, shall be distributed outright to that child. The share created for Son, if he is then living, shall be held, administered and distributed in a separate trust for Son as set forth in Section 4.7. Each share created for such child who is not then living but who leaves issue then living will be divided among that child's issue in the manner provided by State Law.

Section 4.7 provides that the share of the trust estate that is allocated to the trust for Son shall be held, administered, and distributed by the Trustee as a separate trust. The Trustee shall pay to or apply for the benefit of Son all of the net income of the trust, in monthly or other convenient installments, but not less often than annually, for the term of the trust. The Trustee shall not pay any principal of the trust to Son. The trust shall terminate on the death of Son. Upon the death of Son, the Trustee shall allocate the remaining trust property to the then-living grandchildren of Settlor, in equal shares.

Section 5.1 provides that if Stepdaughter dies, becomes incapacitated, or is otherwise unable or unwilling to act as cotrustee with Settlor, then the following persons in the order indicated shall act as cotrustee with Settlor: (a) Daughter 2, (b) Daughter 1, (c) Son-In-Law 3 (husband of Stepdaughter), (d) Son-In-Law 2 (husband of Daughter 2), and (e) Son-In-Law 1 (husband of Daughter 1). If Settlor dies, becomes incapacitated, or is otherwise unable or unwilling to act as cotrustee with Stepdaughter or any successor to her as provided above, there shall be three cotrustees who shall be Stepdaughter, Daughter 2, and Daughter 1. In the event any or all of the foregoing persons die, become incapacitated, or are otherwise unable or unwilling to act as cotrustee, then the successor cotrustee shall be Son-In-Law 3 and if necessary Son-In-Law 2 and if necessary Son-In-Law 1 such that there shall always be three cotrustees when Settlor is no longer acting as a cotrustee.

Section 5.6 provides that the powers of the Trustee shall be limited during the lifetime of Wife since the only principal of the Trust is expected to be The Municipal Bond Portfolio. Only those provisions that have meaning in connection with The Municipal Bond Portfolio shall govern, and all other provisions shall have no meaning during her lifetime unless circumstances change as described in section 4.1 above. After the death of Wife, the following powers shall apply:

(a) With or without court authorization, the right to sell, convey, exchange, partition, and divide trust property; grant options for the sale or exchange of trust property for any purpose, whether the contract is to be performed or the option is to be exercised within or beyond the term of the trust; and lease trust property for any purpose.

(h) With respect to securities held in trust, exercise all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and pay assessments and other sums deemed by the Trustee necessary for the protection of the trust property; participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and, in connection therewith, deposit securities with and transfer title

PLR-131768-02

to any protective or other committee under such terms as the Trustee deems advisable; exercise or sell stock subscription or conversion rights; and accept and retain as investments of the trust any securities or other property received through the exercise of any of the foregoing powers.

(i) Hold securities or other trust property in the Trustee's own name or in the name of a nominee, without disclosure of the trust, or in unregistered form, so that title may pass by delivery.

Section 5.7 provides that during the lifetime of Wife, the bonds in The Municipal Bond Portfolio shall be the only assets of the trust (unless circumstances change as described in section 4.1 above). The Municipal Bond Portfolio may be modified from time to time as necessary but shall at all times be invested in investment grade tax-free municipal bonds rated by Standard & Poor as "BBB-" or higher or by Moody as "Baa" or higher.

Section 5.16 provides that notwithstanding any other provision of the instrument, the powers of the Trustee shall be subject to the following limitations: (a) the Trustee shall have no power or discretion with respect to any life insurance policy on the life of the Trustee that constitutes an incident of ownership in that policy; (b) except with regard to the obligation discussed at the beginning of section 1.3 hereof, the Trustee shall have no power or discretion with respect to the distribution of income or principal to or for the Trustee's benefit, or in satisfaction of the Trustee's legal obligations; (c) if the Trustee would, but for this provision, have had any power or discretion described in (a) or (b), above, that power or discretion shall be exercised by the cotrustee, if any, and if there is no cotrustee, by the next-named successor Trustee acting as special cotrustee.

LAW AND ANALYSIS

Rulings 1 and 2

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in section 1011 for determining gain, and the loss is the excess of the adjusted basis provided in section 1011 for determining loss over the amount realized. Under section 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1041(a)(2) provides that no gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of) a former spouse, but only if the transfer is incident to the divorce.

Section 1041(b) provides that the transferred property described in section 1041(a) shall be treated as acquired by the transferee by gift, and the basis of the transferee in the property shall be the adjusted basis of the transferor.

Section 1041(c) provides, in part, that a transfer of property is incident to a divorce if such transfer is related to the cessation of the marriage. Under section 1.1041-1T Q&A-7 of the Income Tax Regulations, a transfer of property is treated as related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument and the transfer occurs not more than 6 years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument.

In this case, Settlor proposes to transfer funds to Trust pursuant to the Modification. In the event Trust is treated as a grantor trust, Settlor is treated as the owner of the Trust. Therefore, Settlor will not be considered to have made a transfer of property for federal income tax purposes and there is no section 1041 issue to consider. Thus, if Trust is a grantor trust, no gain or loss would be realized by Husband under section 1001.

Alternatively, if Trust is not treated as a grantor trust, Settlor will be considered to have made a transfer of property, but no gain or loss would be recognized by Settlor under section 1001. To the extent that Settlor's proposed transfer of assets to the Trust is for the benefit of Wife, any realized gain on the transfer would not be recognized under section 1041(a). To the extent that Settlor's transfer of assets to the Trust is considered as a gift to Settlor's children, no gain or loss would be recognized.

The transfer of property will be made pursuant to the Modification. Settlor's transfer of property to Trust for Wife's benefit is a transfer that is incident to the divorce within the meaning of section 1041(a)(2) and section 1.1041-1T, Q&A-7. The transfer is pursuant to a divorce or separation instrument and occurs not more than 6 years after the date on which the marriage ceased. Thus, no gain or loss is recognized on such transfer.

Ruling 3

Section 71 provides for the income tax treatment for alimony and separate maintenance payments. Generally, gross income includes amounts received as alimony or separate maintenance payments.

Section 215(a) provides that in the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

Section 671 provides, in general, that if the grantor of a trust or another person is treated as the owner of any portion of the trust, that person's taxable income and credits shall include the income, deductions, and credits of the trust attributable to that portion of the trust to the extent that such items would be considered in computing the taxable income or credits of an individual. Sections 673 through 678 specify the circumstances

PLR-131768-02

under which the grantor or another person will be regarded as the owner of a portion of a trust.

Section 675(4) 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 682(a) provides that there shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of subtitle A of the Code, be includible in the gross income of such husband.

Section 682(b) provides that for purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom section 682(a) applies, such wife shall be considered as the beneficiary specified in part I of subchapter J of chapter 1 of the Code.

Section 7701(a)(17) provides that as used in sections 152(b)(4), 682, and 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband;" and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

Section 1.675-1(b)(4) of the Income Tax Regulations provides that 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.

Prior to 1984, the section 682 regulations provided that section 71 would govern trusts formed in contemplation of divorce such as the one at issue here. However, in the Tax Reform Act of 1984 (P.L. 98-369), Congress amended section 71 and section 682. The legislative history shows that the changes were intended to have section 682 apply to grantor trusts in the case of divorce, regardless of whether they were formed in contemplation of the divorce.

Where an annuity is transferred, or a beneficial interest in a trust is transferred or created, incident to divorce or separation, the transferee will be entitled to the usual annuity treatment, including recovery of the transferor's investment in the contracts (under

PLR-131768-02

section 72), or the usual treatment as the beneficiary of a trust (by reason of section 682), notwithstanding that the annuity payments or payments by the trust qualify as alimony or otherwise discharge a support obligation. H.R. Rept. No. 98-432, Pt. 2, at 1492 (1984).

Trust, to be established incident to Settlor's divorce, will be subject to section 682 and income from Trust to which Wife is entitled is includible in her gross income and not in Settlor's gross income. For purposes of computing the taxable income of Trust and the taxable income of Wife, she will be considered as the beneficiary of Trust.

The circumstances surrounding Trust's administration will determine whether the power of administration is exercisable in a fiduciary or a 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 office with responsibility for such examination. Provided that the circumstances surrounding Trust's administration indicate that the power of administration held by Settlor over Trust (i.e., the power to substitute assets for assets of equivalent value) is exercisable by Settlor in a nonfiduciary capacity without the approval or consent of a person in a fiduciary capacity, Settlor will be treated as the owner of Trust. We further conclude that while both Settlor and Wife are alive, section 682 governs the income taxation of Trust. Accordingly, distributions from Trust to Wife are deductible by Trust and includible by Wife in her gross income to the extent provided in sections 661 and 662. Under the terms of Trust, capital gains are not includible in the distributions to Wife. Accordingly, capital gains are not included in the distributions to Wife and are included in the gross income of Settlor under section 675(4) (subject to the conditions noted above regarding section 675(4)).

We further conclude that if Wife predeceases Settlor, upon the death of Wife, section 682 would no longer apply and Trust will be treated as a grantor trust with Settlor as owner, provided that, after the death of Wife, Settlor retains the same powers of administration that cause Trust to be a grantor trust under section 675(4) (subject to the conditions noted above regarding section 675(4)). If Settlor predeceases Wife, section 682 no longer applies and payments to Wife will be deductible to Trust under section 661 and includible in Wife's gross income under section 662. Income allocable to principal will be taxable to Trust. If neither Settlor nor Wife are alive, then the income taxation of Trust is also governed by the rules of subchapter J, other than the grantor trust rules and section 682.

Ruling 4

Section 2501(a) imposes a gift tax for each calendar year on the transfer of property by gift during the year by an individual.

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(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2516 provides that where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of issue of the marriage during minority, shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

In this case, Settlor and Wife entered into Judgment relative to their marital and property rights on Date 3. The transfers by Settlor to the trust are made pursuant to Judgment. The transfer to Trust is in full satisfaction of Settlor's support obligation to Wife. Accordingly, based on the facts submitted and representations made, we conclude that, to the extent of the annuity interest of Wife, the transfer to Trust will constitute a transfer for full and adequate consideration under section 2516, and the only taxable gift by Settlor will be the gift of Trust remainder to Settlor's children under section 2511.

Rulings 5, 7, and 8

Section 2031(a) provides that the value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

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 all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in a case of a bona fide sale for 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 20.2036-1(b)(3) of the Estate Tax Regulations provides that the phrase "right . . . to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom" includes a reserved power to designate the person or

persons to receive the income from the transferred property, during the decedent's life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest; (ii) in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent's control which did not occur before his death (e.g., the death of another person during the decedent's lifetime). The phrase, however, does not include a power over the transferred property itself which does not affect the enjoyment of the income received or earned during the decedent's life. Nor does the phrase apply to a power held solely by a person other than the decedent. But, for example, if the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered as having the powers of the trustee.

Section 20.2036-1(b)(2) provides that the term "use, possession, right to the income, or other enjoyment of the transferred property" is considered to have been retained by or reserved to the decedent to the extent that the use, possession, right to the income, or other enjoyment is to be applied toward the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit.

Section 2038(a)(1) provides that the value of the gross estate includes 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 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 by the decedent to alter, amend, revoke, or terminate the interest in the property or where the decedent relinquished such power within the three-year period ending on the date of the decedent's death.

Section 2039(a) provides that the gross estate shall include the value of an annuity payment or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 1, 1931 (other than as insurance under policies of the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his or her life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

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 such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's

PLR-131768-02

gross estate under sections 2035 to 2038, inclusive. For purposes of section 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.

In the instant case, Settlor's proposed transfer of property to Trust satisfied his spousal support obligation. Settlor will not continue to have any legal obligation to support Wife. Accordingly, based on the facts submitted and representations made, we conclude that no portion of Trust will be included in the estate of Settlor.

Furthermore, section 3.2 of Trust prevents Settlor from having any right to the possession or enjoyment of the principal or income of Trust estate, or any right to designate the persons who will possess or enjoy the principal or income of Trust estate. As trustee of Trust, Settlor would merely control the investments of the Trust assets in a fiduciary capacity. Accordingly, based on the facts submitted and representations made, we conclude that no portion of Trust will be included in the estate of Settlor if he serves as trustee of Trust.

Moreover, Wife will receive an annuity amount of \$d per year. Upon Wife's death, her interest in Trust will terminate. Wife will have no interest that she can transmit to others, upon her death. Accordingly, based on the facts submitted and representations made, we conclude that no portion of Trust will be included in the gross estate of Wife.

Ruling 6

Section 2702(a)(1) provides, in general, that solely for purposes of determining whether a transfer in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or by any applicable member of the transferor's family (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

Section 2702(a)(2)(A) provides that the value of any retained interest which is not a qualified interest shall be treated as zero.

Section 2702(a)(2)(B) provides that the value of any retained interest which is a qualified interest shall be determined under section 7520.

Section 2702(b)(1) provides that the term "qualified interest" means any interest which consists of the right to receive fixed amounts payable not less frequently than annually.

PLR-131768-02

Section 2702(b)(3) provides that the term "qualified interest" means any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

Section 2701(e)(2) provides that the term "applicable family member" means, with respect to any transferor - (A) the transferor's spouse, (B) an ancestor of the transferor or the transferor's spouse, and (C) the spouse of any such ancestor.

In the instant case, Settlor has not retained any interest in Trust. Wife will have the right to annuity payments from the income and principal of Trust and the remainder will pass to Settlor's children. Accordingly, section 2702 does not apply to this transaction.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

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.

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,

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

Enclosure:

Copy of letter for section 6110 purposes