

Internal Revenue Service
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Department of the Treasury

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Date: December 23, 1998

Re:

LEGEND:

Settlor	=
J	=
K	=
L	=
M	=
N	=
Trustee	=
Trust 1	=
Trust 2	=
Trust 3	=
State	=

We received your letter, dated April 22, 1998, requesting a ruling on behalf of Trustee concerning the application of § 2511 of the Internal Revenue Code. This letter responds to your request.

The facts and representations submitted are summarized as follows. In 1954, Settlor, a resident of State, created Trust 1 and Trust 2 for the benefit of Settlor's son, J and J's two sons, L and M. Another trust, Trust 3, was created in 1954 by Settlor for the benefit of K.

J died on February 1, 1971, survived by L and M. K died on September 5, 1997, without issue.

Under the terms of Trust 3, the trustee, who is currently Trustee, is authorized to pay or apply for the benefit of K and the living issue of K the net income and principal of Trust 3 in Trustee's sole and uncontrolled discretion. Under Article Second, upon the death of K, without issue, Trust 3 was divided into two equal parts, Part A and Part B. The income of Part A was to be paid, until the death of Settlor's son, N, to or for the benefit of N and N's issue. Under the terms of Trust 3, upon N's death without issue, the remaining principal and income of Part A was added to Part B. Part B, upon the death of N, is to be distributed in equal shares to Trust 1 and Trust 2. In the event that one but not both of Trust 1 and Trust 2 has terminated, then Part B is to be paid to the trustees of the remaining trust. "[I]f neither of said trusts shall be in full force and effect, then the said Part B shall be distributed per stirpes to the then living issue of J, and to the then living children of any deceased issue of J, free and clear of all trusts."

Trust 1, created on August 3, 1954, provides that Trustee may, during the life of J, pay or apply for the benefit of any one or more of the group consisting of J and J's living issue, such amounts of income and/or principal as Trustee determines in Trustee's sole and uncontrolled discretion. Upon the death of J, the then remaining principal and undistributed income of Trust 1 is to be paid or held for the benefit of any one or more of the limited group consisting of the issue of J and the brothers of J as J may appoint in and by his will made and executed after the date of Trust 1, making specific reference to the power of appointment.

In the exercise of this power, the Grantor's son may appoint outright or in trust; he may select the Trustee or Trustees if he appoints in trust; he may, if he appoints in trust, establish such administrative powers for the Trustee as he deems appropriate; he may create life interests or other limited interests in an appointee with future interests in favor of other appointees; he may impose lawful conditions on any appointment; he may appoint different types of interests to selected appointees; he may impose lawful spendthrift provisions on any appointee; and generally, he may appoint by his will in any manner he selects, provided

always, however, that no appointment authorized herein shall benefit directly or indirectly the estate of Grantor's said son or his creditors or the creditors of his estate.

In default of the exercise of the power of appointment, Trust 1 property is to be divided into as many equal shares as there are children of J then living and children of J then deceased with issue then living.

J died on February 1, 1971. In Article IX of J's Last Will and Testament, J exercised the special power of appointment that was granted to J under the terms of Trust 1, as follows:

...I hereby appoint to my Trustee, hereinafter named, all of the principal of Trust 1 remaining at my death, to be held in trust and administered and disposed of as follows: Such trust shall continue to be known as [Trust 1.] Trustee shall pay to or apply for the benefit of my sons, [L and M], the lawful children of my said sons, and the lawful issue of deceased lawful children of my said sons all of the net income of [Trust 1] and such amounts of principal of such trusts from time to time as my Trustee deems advisable. My Trustee may pay or apply such income and principal to or for the benefit of one or more of the members of the aforementioned group and to the exclusion of one or more other members of said group, in such amounts and proportions as it in its sole discretion shall deem advisable...

Upon the death of the survivor of my sons, [L and M], Trustee shall divide Trust 1 into as many equal parts as there are lawful children of [L and M] then living, plus lawful children of my said sons then deceased who have lawful issue then living...

Trust 2 terminated upon the death of J, when pursuant to Article Second, all of the trust assets were distributed to J's issue, outright and free of trust.

Trustee proposes to distribute Part B of Trust 3, pursuant to the direction in Trust 3, Article Second, Paragraph (b)(ii) to Trust 1.

It is represented by Trustee that Trust 1 continues to have the same name and the same taxpayer identification number after J's exercise of J's special power appointing Trust 1 in further trust. It is represented by Trustee that no distribution or termination fees were charged to the Trust 1 account upon J's appointment of Trust 1 corpus in further trust and no accounting was performed to mark the end of an account upon the death of J.

Trustee requests a ruling that upon the distribution of Part B of Trust 3 to Trust 1, neither L nor M will be treated as having made a transfer of property by gift subject to the tax imposed by § 2501.

Section 2501 imposes a tax 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, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

In the present case, Trust 1 has been administered, since its creation in 1954, as a single trust. The terms of Trust 1 after J's appointment are substantially similar to terms established by the Settlor in 1954. Discretionary distributions of income and principal to L and M, the children of L and M and the issue of deceased children of L and M may be made by Trustee. Upon the death of the survivor of L and M, Trust 1 is to be divided into equal shares for the then living lawful children of L and M and the lawful deceased children of L and M who have lawful issue surviving.

Under State law, Trust 1 continues to be subject to the same perpetuities period (i.e., the trust must terminate within the lives in being plus 21 years of the creation of Trust 1 in 1954).

Accordingly, we conclude that upon the death of N, Trust 1 was still "in full force and effect" within the meaning of the terms of Trust 3. Distribution of the Trust 3 corpus to Trust 1 is consistent with the terms of Trust 3, the intent of the Settlor and applicable State law. Therefore, upon the distribution of Part B of Trust 3 to Trust 1, neither L nor M will be treated as having made a transfer of property by gift subject to the tax imposed by § 2501.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

Sincerely yours,

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

Enclosure

Copy for section 6110 purposes