

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:P&SI:4-PLR-129227-01

Date:

December 05, 2001

Re:

### Legend

Grantor =  
Daughter =  
Trust =  
Date 1 =  
Date 2 =  
Date 3 =

Dear :

This is in response to your letter dated May 22, 2001, requesting a ruling under § 2041(a) of the Internal Revenue Code.

In 1983, Grantor created a revocable trust, Trust. Trust was finally amended on Date 1, and became irrevocable on Grantor's death, Date 2. After the death of Grantor, the trust provides for the creation of a "Family Trust." Under the terms of the Family Trust, the trustee is to pay the trust income to Grantor's daughter, Daughter, for life. The trustee also has the power to invade corpus for Daughter's health and maintenance in reasonable comfort. The trust further provides in article FOURTH, SECTION 2:

Upon the death of [Daughter] if she survives the settlor, the Family Trust shall be held in trust hereunder or distributed to or in trust for such one or more of settlor's descendants with such powers and in such manner and proportions as [Daughter] may appoint by her will making specific reference to this power of appointment.

Article FOURTH, SECTION 3 provides that upon Daughter's death, any part of the Family Trust which is not effectively appointed is to be distributed per stirpes to Daughter's then living descendants, or if none, then per stirpes to Grantor's then living descendants.

Daughter died Date 3 and exercised her power of appointment in favor of her

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adult children, outright.

You have requested a ruling that the testamentary power of appointment granted to Daughter over Trust is not a general power of appointment within the meaning of § 2041(b)(1) and, therefore, the existence, exercise, failure to exercise, or partial or complete release of the power of appointment will not cause the value of the property in Trust to be included in Daughter's gross estate under § 2041(a).

Section 2041(a)(2) provides that the value of the gross estate includes the value of all 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, the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment is 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.

Section 2041(b)(1) provides, with exceptions not relevant here, that the term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that the term "general power of appointment" as defined in § 2041(b)(1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Section 20.2041-1(c)(1)(a) provides that a power of appointment is not a general power if by its terms it is 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.

In this case, Daughter may appoint by will to the class consisting of Grantor's descendants. Because Daughter's power of appointment is a testamentary power, Daughter may not appoint any part of the trust to Daughter or to Daughter's creditors during Daughters's life. In addition, based on the terms of the trust instrument, the reference to "[Grantor's] descendants" as a permissible class of appointees of Daughter's testamentary power is properly viewed as not including Daughter's estate or Daughter's creditors after Daughter's death.

Accordingly, based on the information submitted and the representations made, we conclude: (1) Daughter's testamentary power of appointment over the principal of the Trust does not constitute a general power of appointment within the meaning of § 2041(b)(1); and (2) the existence, exercise, failure to fully exercise, or partial or complete release of Daughter's power to appoint the principal of the Trust will not cause the value of the property in the Trust to be included in Daughter's gross estate under §

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2041(a).

This ruling is directed only to the taxpayer(s) 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 the taxpayer.

Sincerely yours,  
Lorraine E. Gardner  
Acting Senior Technician Reviewer  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy of letter for section 6110 purposes