

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

June 29, 1999

In Re:

LEGEND

Grantor =

Spouse =

Trust =

Son =

Sister =

Grandson =

This letter is in response to a letter dated March 22, 1999, requesting a rulings under § 2041(a) of the Internal Revenue Code.

In 1969, Grantor and Spouse (Grantors) created Trust for the benefit of Son and his family. Article Second, Paragraph 1, of Trust provides the trustees with the authority to distribute the net income of Trust to Son and his living issue. Paragraph 1 also provides the trustees with the discretion to distribute principal from Trust to Son and his living issue for their comfortable maintenance, support, health, education and well-being.

Article Second, Paragraph 2, of Trust provides Son with a testamentary power of appointment and states as follows:

2. Special Power of Appointment. Upon the death of the survivor of [Son] and his issue or, twenty-one (21) years after the death of the survivor of [Son], his sister [Sister] and his son [Grandson], whichever shall first occur, the trustees shall pay over the then remaining principal

and undistributed income, free and clear of any trust, in such amounts and proportions as [Son] shall appoint to or among any one or more of [Grantors'] issue and the spouse of issue by a Will referring specifically to the power herein given to him. If or to the extent [Son] does not exercise the power of appointment given by the preceding sentence, the Trustees shall hold and dispose of the remaining principal and undistributed income in accordance with the terms of the following paragraph of this Article
SECOND.

Son has requested a ruling that the testamentary power of appointment 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 Son'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, Son may appoint by will to the class consisting of Grantor's issue and the spouses of such issue. Because Son's power of appointment is a testamentary power, Son may not appoint any part of the trust to Son or to Son's creditors during Son's life. In addition, based on the terms of the trust instrument, the reference to

"[Grantor's] issue" as a permissible class of appointees of Son's testamentary power is properly viewed as not including Son's estate or Son's creditors after Son's death.

Accordingly, based on the information submitted and the representations made, we conclude: (1) Son'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 Son's power to appoint the principal of the Trust will not cause the value of the property in the Trust to be included in Son's taxable estate.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(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.

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.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure (1)
Copy for § 6110 purposes

cc: