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Department of the Treasury

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### Legend:

Date 1	=
Taxpayer 1	=
Taxpayer 2	=
Trust 1	=
Child	=
Spouse	=
Individual 1	=
Individual 2	=
Bank	=
Grandchild	=
A	
Grandchild	=
B	
Grandchild	=
C	
Trust 1A	=
Trust 1B	=
Trust 1C	=
Date 2	=
Grandchild	=
D	
Trust 1D	=
Date 3	=
Trust 2	=
Trust 3	=

Dear \_\_\_\_\_ :

This is in response to your authorized representative's letter, dated March 16, 2004, requesting rulings on the income, estate, gift, and generation-skipping transfer (GST) tax consequences of a proposed trustee action.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer 1 and Taxpayer 2 ("Settlors") established Trust 1, an irrevocable trust for the benefit of the children of Child and Spouse.

Article I, section 1.4 of Trust 1 provides, in part, that Spouse, Individual 1, and Individual 2 shall be the initial co-trustees of Trust 1. Settlers reserve, during their lifetimes, the power to appoint an "Independent Trustee" should Spouse fail, refuse, or cease to serve as Independent Trustee. However, upon the death of Taxpayer 1, Settlers appoint Bank and its corporate successors as an Independent Trustee to serve in conjunction with any other then serving trustees or to serve alone in the event there are no other then serving trustees. Settlers and Child reserve the power during their lifetimes to appoint additional "Related Trustees," "Special Trustees," or Independent Trustees provided, however, that in no event shall Settlers or Child ever serve as a trustee of this trust nor shall Settlers or Child have the power to appoint themselves as a trustee of this trust. Settlers shall not have the power to remove any trustee. However, Child, while living and competent, and subsequent to her death or incapacity, Spouse, while serving as a trustee, shall have the power to remove any Special Trustee when, in their respective sole discretion, the best interests of the trust and beneficiaries will be better served by the appointment of a respective successor Special Trustee. Any specific reference in this trust to a Special Trustee shall be in reference to Individual 1 and Individual 2. Any specific reference in this trust to a Related Trustee shall mean any beneficiary in their capacity as a trustee of the trust. Any specific reference to an Independent Trustee shall be in reference to a trustee who is not a Special Trustee or Related Trustee. Otherwise, any general reference to "Trustee" or "Trustees" shall be in reference to an Independent Trustee or a Related Trustee.

Article I, section 1.5 provides, in part, that the trustees shall establish a separate trust for each child of Child and Spouse (Settlers' grandchildren), whether now living or hereafter born or adopted. At the time of Trust 1's formation, this included Grandchild A, Grandchild B, and Grandchild C. In the event any child is born to or adopted by Child and Spouse after the creation of Trust 1, but while Child and Spouse are married, the trustee shall establish a separate trust for such child.

Article II, section 2.2 provides, in part, that the trustees may distribute so much or all of the net income and/or principal of the trust to or for the benefit of the beneficiaries as is necessary to provide for their respective health, education and maintenance in accordance with their respective standard of living.

Article II, section 2.3 provides, in part, that each separate trust shall terminate on the last day of the month which is twelve months after the date on which the first of the following events occur: (1) the date of death of the survivor of Settlor and Child; or (2) the earlier death of the respective child of Child and Spouse for whose benefit a trust was established. The trustees shall distribute the assets of each separate trust to the respective child of Child and Spouse for whose benefit such separate trust was established, provided such child is then living and further subject to the provisions of this trust agreement regarding continued trust administration of a child's trust because of his or her age or incompetency. In the event a separate trust terminates because of the prior death of a child of Child and Spouse, each child shall have the testamentary power to appoint the principal of his or her trust to or for the benefit of a class of individuals consisting solely of his or her descendants and his or her siblings and their respective descendants. In the event a child fails to exercise his or her special testamentary power of appointment, the trustees shall distribute the trust estate of that separate trust to the then living descendants of Child and Spouse, per stirpes, or if none, to the heirs at law of each Settlor.

Article II, section 2.4 provides, in part, that if any then living child of Child and Spouse is below the age of 40 years at the time the trust estate of his or her separate trust is to be distributed, that trust shall not terminate. Instead, the trustee shall continue to administer the trust estate of that separate trust for such child's benefit, with actual terminating distributions to be made as follows: (a) If the child is below the age of 30 years at such time, the trustee shall retain all of that child's share in trust, and shall distribute that share one-third when the child attains the age of 30 years, one-half of the balance of the trust when the child attains the age of 35 years, and the remainder when the child attains the age of 40 years; (b) If the child has attained the age of 30 years, but is below the age of 35 years, the trustee shall distribute one-third of that share immediately to the child. The remaining portion shall be retained by the trustee in trust for the child's benefit. The trustee shall distribute one-half of the balance of the trust to the child when he or she attains the age of 35 years, and the remainder when he or she attains the age of 40 years; (c) If the child has attained the age of 35 years, but is below the age of 40 years, the trustee shall distribute two-thirds of that share immediately to the child. The remaining portion shall be retained by the trustee in trust for his or her benefit and distributed to that child when he or she attains the age of 40 years.

Exhibit A, Article II, section 2.3 of Trust 1 provides, in part, that the successor trustees of the trust be appointed pursuant to the following provisions: (a) In no event shall Settlor ever serve as a trustee of this trust, nor shall the appointment powers be interpreted to permit either Settlor to serve as a trustee; (b) Should all named and/or designated Related Trustees for any reason cease or fail to serve, Taxpayer 1, while living and competent, and, subsequent to his death or incapacity, Taxpayer 2, while living and competent, shall have the continuing power to appoint a successor Related Trustee. Subsequent to the death or incapacity of both Settlor, Child shall have the continuing power to appoint a successor Related Trustee. Subsequent to the death or incapacity of Child, the Independent Trustee shall have the continuing power to

either act alone or to appoint another Related Trustee, whichever the Independent Trustee, in its sole discretion, shall determine; (c) Should all named and/or designated Special Trustees for any reason cease or fail to serve, Taxpayer 1, while living and competent, and, subsequent to his death or incapacity, Taxpayer 2, while living and competent, shall have the continuing power to appoint a successor Special Trustee. Subsequent to the death or incapacity of both Settlers, Child shall have the continuing power to appoint a successor Special Trustee. Subsequent to the death or incapacity of Child, the Independent Trustee shall have the continuing power to either act alone or to appoint another Special Trustee, whichever the Independent Trustee, in its sole discretion, shall determine.

Exhibit A, Article III, section 3.10 of Trust 1 provides, in part, that all trusts created by this trust agreement shall in all events terminate not later than twenty-one years from and after the death of the survivor of the following persons: Settlers, Child, and all beneficiaries and their descendants living on the date Trust 1 is effective or deemed created.

Exhibit A, Article III, section 3.11 of Trust 1 provides, in part, that it is possible that the trustee, in the exercise of its discretion, may find it advisable to make income and/or principal distributions to the trustees of any other trust of which a beneficiary is a current beneficiary. The trustee is also authorized (but not directed) to distribute the income and principal for a respective beneficiary to the trustees of any other trust which has been established for the benefit of that respective beneficiary.

Exhibit A, Article III, section 3.13 of Trust 1 provides that the trustee is specifically and expressly prohibited from utilizing and/or distributing any part of the income and/or principal of the trust for Settlers', any trustee's, or any beneficiary's parents' legal or contractual obligation to support any lawful dependent.

Exhibit A, Article IV, section 4.7(b) of Trust 1 provides that if at any time any trustee of this trust shall also be acting as a trustee of any other trust for the benefit of the same beneficiary or beneficiaries and upon substantially the same terms, conditions and provisions, the corporate trustee, in its discretion, is authorized to transfer and merge all of the assets held in this trust to and with the other such trusts and terminate this trust. In no event, however, shall this discretionary power be construed as a power of amendment, modification, or appointment in the hands of the trustee.

Pursuant to Article I, section 1.5, Trust 1 was divided into Trust 1A, Trust 1B, and Trust 1C, separate trusts for the benefit of Grandchild A, Grandchild B, and Grandchild C, respectively. On Date 2, Grandchild D was born and pursuant to Article I, section 1.5, a separate trust, Trust 1D, was established. It is represented that no additions were made to Trust 1 after September 25, 1985.

Pursuant to Exhibit A, Article III, section 3.11 of Trust 1, on Date 3, the trustee of Trust 1 transferred all of the assets of Trusts 1A through Trust 1D to corresponding separate trusts for each grandchild under a newly created Trust 2 (Trusts 2A through 2D). The dispositive provisions of Trusts 2A through 2D are identical to those contained in Trusts 1A through Trust 1D. Trust 2 also provided the trustee with the limited power to distribute the assets of Trust 2 to another trust for the benefit of the same beneficiaries under the same provisions as were included in Trust 1. In addition, Trust 2 provided that all trusts created by the trust agreement shall in all events terminate not later than twenty-one years from and after the death of the survivor of the following persons: Child, Settlers, and all beneficiaries and their descendants living on Date 1 ("rule against perpetuities provision"). The only changes reflected in Trust 2 pertain to the administration of the trust and include provisions relating to issues such as the appointment and removal of trustees and the management and handling of certain trust assets.

Exhibit C, section 1.02(a) of Trust 2 provides, in part, that Spouse, as trustee of Trust 2, may appoint co-trustees or successor trustees, none of whom may be Child or Settlers. Spouse may grant any of the powers described in Exhibit C, section 1.02(a) to Settlers' grandchild who is a primary beneficiary of the separate trust at any time after he or she attains the age of 18. Notwithstanding the foregoing, upon Spouse's death or incapacity and after attaining age 25, Settlers' grandchild who is the primary beneficiary of the separate trust shall have the power to appoint co-trustees or successor trustees.

Exhibit C, section 1.02(b) of Trust 2 provides, in part, that if Spouse fails or ceases to serve as trustee of any trust and if either: (i) no trustee is appointed as provided in Exhibit C, section 1.02(a), or (ii) all the trustees appointed fail or cease to act as trustee, Grandchild A and Grandchild B are appointed successor co-trustees. If either of Grandchild A or Grandchild B fail or cease to serve as co-trustee, the other of them shall serve as sole trustee. Notwithstanding the foregoing, upon Spouse's death or incapacity and after attaining age 25, Settlers' grandchild who is the primary beneficiary of the separate trust shall have the right to begin serving as sole trustee of his or her separate trust.

Exhibit C, section 1.02(c) of Trust 2 provides, in part, that a majority of then serving trustees may at any time appoint one or more "Terminating Trustees," none of whom may be the beneficiary, Spouse, Child, or Settlers, or any related or subordinate party pursuant to § 672(c) of the Code, to act upon any stated contingency.

Exhibit A, section 4.10 of Trust 2 provides, generally, that the Terminating Trustee, if any, shall have the discretionary power to terminate the trust (or any separate trust) if the continued management of the trust (or any separate trust) is no longer economical under the circumstances that may exist at that time. The remaining property of the trust so terminated shall be distributed to or for the benefit of the beneficiary or beneficiaries of each trust in accordance with the dispositive provisions of the trust agreement.

It is represented that there have been no additions to Trust 2 after September 25, 1985.

The trustee of Trust 2 proposes to transfer the assets of Trusts 2A through 2D, the separate trusts under Trust 2, to a newly created Trust 3 (Trusts 3A through 3D). Trust 3 will contain the same rule against perpetuities provision as contained in Trust 1 and Trust 2. Generally, the dispositive provisions of Trust 3 will be identical to those contained in Trust 2, with the following exceptions.

Article II, section 2.3(a) of Trust 3 will provide that each separate trust shall terminate when the first of the following events occur: (1) the date of death of the respective child of Child and Spouse for whose benefit a separate trust was established; or (2) the date on which the Terminating Trustee terminates the trust. Article II, section 2.3(b) will provide that the trustee shall distribute the assets of each separate trust to the respective child of Child and Spouse for whose benefit such separate trust was established, provided such child is then living. Article II, section 2.3(c) will provide that in the event a separate trust terminates because of the death of a child of Child and Spouse, each child shall have the power to appoint the principal of his/her trust to or for the benefit of a class of individuals consisting solely of his/her descendants and his/her brothers and sisters and their respective descendants, pursuant to a clause in his/her last will and testament.

In addition, several of the administrative provisions contained in Trust 3 will be revised.

The following rulings have been requested:

- (1) The trustee's exercise of its limited power of appointment in Trust 1 to distribute the income and principal of the trust for each grandchild to Trust 2, the newly created successor trust for the benefit of the same grandchild, does not cause Trust 2 to be subject to the GST tax under § 2601;
- (2) The modifications of the administrative provisions contained in Trust 2 do not cause Trust 2 to be subject to GST tax under § 2601;
- (3) The trustee's exercise of its limited power of appointment in Trust 2 to distribute the income and principal of the trust for each grandchild to a proposed newly created successor trust for the benefit of the same grandchild under Trust 3 will not cause Trust 3 to be subject to GST tax under § 2601;
- (4) The modification of the administrative provisions under Trust 3 (compared to Trust 2) do not cause Trust 3 to be subject to GST tax under § 2601 of the Code;

(5) The beneficiaries of Trust 3 will not hold a general power of appointment as defined in § 2041 or § 2514 of the Code, even if such beneficiary acts as trustee or may appoint successor trustees, because the trustee of each trust may only make distributions for the grandchild's health, education, and maintenance, which is an ascertainable standard;

(6) Trust 2 will not realize gain or loss under § 1001 on the transfer of assets to Trust 3;

(7) The assets in Trust 3 will retain the same basis and holding periods under §§ 1015 and 1223 of the Code as in Trust 2; and

(8) Trust 1, Trust 2, and Trust 3 are "qualified trusts" so that the transfer of assets to the successor Trust 3 will not constitute an accumulation distribution under § 665 of the Code.

#### Ruling Requests 1-4:

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term "generation-skipping transfer" as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. However, this exemption does not apply if additions (actual or constructive) are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in § 26.2601-1(b)(ii)(B) or (C), which relates to property includible in a grantor's gross estate under §§ 2038 and 2042.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer 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 § 1001.

Section 26.2601-1(b)(4)(i)(A) provides that:

The distribution of trust principal from an exempt trust to a new trust or retention of trust principal in a continuing trust will not cause the new or continuing trust to be subject to the provisions of chapter 13 if—

(1) Either—

(i) The terms of the governing instrument of the exempt trust authorize distributions to the new trust or the retention of trust principal in a continuing trust without the consent or approval of any beneficiary or court; or

(ii) at the time the exempt trust became irrevocable, state law authorized distributions to the new trust or retention of principal in the continuing trust, without the consent or approval of any beneficiary or court; and

(2) The terms of the governing instrument of the new or continuing 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 plus a period of 21 years, plus if necessary, a reasonable period of gestation. For purposes of this paragraph (b)(4)(i)(A), the exercise of a trustee's distributive power that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date the original trust became irrevocable) will not be considered an exercise that postpones or suspends vesting, absolute ownership, or the power of alienation beyond the perpetuities period. If a distributive 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)(4)(i)(E), Example 1, provides that:

In 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse, or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate 21 years after the death of the last child of



A to die who was alive at the time 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. In 2002, the trustee distributes 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 terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument 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 an 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 of the Internal Revenue Code.

In the present case, Trust 1 was established on Date 1. Date 1 is a date prior to September 25, 1985. Trust 1 is considered irrevocable because neither § 2038 nor § 2042 apply. Further, it is represented that there have been no additions made to Trust 1 after September 25, 1985. Accordingly, Trust 1 is currently exempt from the GST tax under § 26.2601-1(b)(1).

Based on the facts submitted and the representations made, the terms of Trust 1 authorize the distribution of income and/or principal to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of Trust 2 incorporate the same rule against perpetuities provision contained in Trust 1 and do not extend the time for vesting of any beneficial interest. Therefore, neither the trustee's exercise of the power to distribute the income and principal of each trust to Trust 2, nor the modifications to the administrative provisions contained in Trust 2 cause Trust 2 to be subject to GST tax under § 2601.

The terms of Trust 2 authorize the distribution of income and/or principal to a new trust without the consent or approval of any beneficiary or court. The terms of Trust 3 incorporate the same rule against perpetuities provision contained in both Trust 2 and Trust 1 and do not extend the time for vesting of any beneficial interest. Therefore, neither the trustee's exercise of the power to distribute the income and principal of Trusts 2A through 2D to Trust 3, nor the modifications to the administrative provisions contained in Trust 3 cause Trust 3 to be subject to GST tax under § 2601.

#### Ruling Request 5:

Section 2041(a)(2) provides that 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 gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1) provides that the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides, in part, that the term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the decedent is not considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of his death, without an accompanying unrestricted power of removal. Similarly, a power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment.

Section 20.2041-1(c)(1) 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, except (i) joint powers, to the extent provided in §§ 20.2041-2 and 20.2041-3, and (ii) certain powers limited by an ascertainable standard.

Section 20.2041-1(c)(2) provides that a power to consume, invade, or appropriate income or corpus, or both, for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is, by reason of § 2041(b)(1)(A), not a general power of appointment. A power is limited by such a standard if the extent of the holder's duty to exercise and not

to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them).

Section 2514 provides for a similar definition of a general power of appointment for gift tax purposes, and § 25.2514-1(c) of the Gift Tax Regulations contains provisions similar to § 20.2041-1(c).

The trustee appointment, succession, and removal provisions and general dispositive provisions of Trust 3 will be identical to those contained in Trust 2. In this case, the Settlers' grandchildren who are the primary beneficiaries of the separate trusts under Trust 3, are permitted to serve as trustee of their respective trusts. However, Article II, section 2.2 of Trust 3 limits the trustee's power to distribute net income and/or principal of the trust to an ascertainable standard relating to the respective beneficiary's health, education, support or maintenance. In addition, Article I, section 1.5(b)(iii) provides that neither the beneficiary, Spouse, Child, nor Settlers or any related or subordinate party pursuant to § 672(c) may serve as Terminating Trustee with the discretion to terminate Trust 3 (or any separate trust). Accordingly, pursuant to §§ 2041 and 2514, the beneficiaries of Trust 3 will not possess a general power of appointment.

#### Ruling Request 6:

Section 61(a)(3) provides that gross income includes gains derived from dealings in property and, under § 61(a)(15), from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

In Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), the Supreme Court of the United States ruled on the elements necessary to determine that, under § 1001, a sale or exchange resulting in realization of gain or loss had occurred. The Court held that realization under § 1001 required: (1) a sale, exchange, or other

disposition, and (2) in the case of an exchange, the receipt of property that was “materially different” from the property disposed of.

Because the transfer of assets from Trust 2 to Trust 3 was made under the authority granted to the trustee under the express terms of the trust document, the beneficiaries do not acquire their interests in Trust 3 as a result of the exchange of their interests in Trust 2, but instead by reason of the exercise of the trustee’s existing authority to make distributions in further trust. In addition, the trustee’s additional administrative powers do not constitute an exchange by the beneficiaries.

Because no exchange has occurred, it is unnecessary to analyze whether the “materially different” standard has been satisfied.

Accordingly, the proposed transfer of assets from Trust 2 to Trust 3 will not result in realization of gain or loss under §§ 61 or 1001.

Ruling Request 7:

Section 1015(b) provides that if property is acquired by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by transfer in trust by gift, bequest, or devise) the basis of property so acquired is the same as it would be in the hands of the grantor increased by the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by transfer in trust, this basis applies whether the property be in the hands of the trustee, or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Section 1223(2) provides that in determining the period for which a taxpayer has held property, however acquired, there shall be included the period for which such property was held by any other person, if under Chapter 1 of the Code, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

Based upon the information submitted and representations made, we conclude that because § 1001 does not apply to the transfer of assets from Trust 2 to Trust 3, the basis of each asset in the hands of Trust 3 will be the same as the basis of that asset in the hands of Trust 2 immediately before the distribution in further trust.

Accordingly, the assets transferred to Trust 3 will retain the same holding period under § 1223 as in Trust 2.

Ruling Request 8:

Sections 665 through 668 provide rules for the taxation of accumulated income distributions by a trust.

Section 665(b) provides that, for purposes of subpart D, except as provided in § 665(c), the term "accumulation distribution" means, for any taxable year of the trust, the amount by which: (1) the amounts specified in paragraph (2) of § 661(a) for such taxable year, exceed (2) distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of § 661(a).

Section 661(a) provides that in any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of (1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and (2) any other amounts properly paid or credited or required to be distributed for such taxable year; but such deduction shall not exceed the distributable net income of the estate or trust.

Section 661(b) provides that the amount determined under § 661(a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument.

Section 661(c) provides that no deduction shall be allowed under § 661(a) in respect of any portion of the amount allowed as a deduction under § 661(a) (without regard to § 661(c)) which is treated under § 661(b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

Section 665(c)(1) provides, that for distributions in tax years beginning after August 5, 1997, for purposes of subpart D, in the case of a qualified trust, any distribution in any taxable year beginning after the date of the enactment of § 665(c) shall be computed without regard to any undistributed net income.

Section 665(c)(2) defines "qualified trust," for the purposes of § 665(c) as any trust other than: (A) a foreign trust (or, except as provided in regulations, a domestic trust which at any time was a foreign trust), or (B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under § 643(f) if such section applied to such trust.

Section 643(f) provides that for purposes of subchapter J, under regulations prescribed by the Secretary, two or more trusts shall be treated as one trust if: (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiaries, and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1.

Trust 1 created separate trusts for each of Settlor's grandchildren. While each trust had the same grantors, each trust had a different primary beneficiary. Since each trust was separately managed and administered, each should be treated as a separate trust. Therefore, based on these facts, the trustee's transfer of the principal and undistributed income of Trust 1 into Trust 2, and subsequently into Trust 3, is not a distribution under § 661, and subsequent distributions from the trusts, will not be subject to the accumulation distribution rules under § 665.

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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 your authorized representative.

Sincerely,

Melissa C. Liquerman  
Branch Chief, Branch 9  
(Passthroughs & Special Industries)

Enclosure

Copy of letter for § 6110 purposes