

Internal Revenue Service

Number: **200904001**

Release Date: 1/23/2009

Index Number: 1001.02-07

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-119361-07

Date:

September 29, 2008

Legend

Trust =

Daughter =

Age 1 =

Age 2 =

Dear :

This is in response to your letter of March 29, 2007, submitted on your behalf by your authorized representative, requesting a ruling on the income tax consequences of certain proposed modifications to Trust.

FACTS

Trust is an irrevocable inter vivos trust established for the benefit of Daughter and her issue. Income is payable to Daughter for life. Upon Daughter's death, the corpus shall be divided into as many equal shares as there are children of Daughter surviving, and children of Daughter who have predeceased Daughter leaving descendants surviving. Income is then payable to each beneficiary in the trustee's discretion for the beneficiary's support, maintenance and education. When a beneficiary attains Age 1, one-half of the share shall be distributed outright to the beneficiary. The remainder of the share shall be distributed outright when the beneficiary attains Age 2. In the event of the death of a beneficiary prior to the distribution of that beneficiary's share, the share shall be distributed to the beneficiary's then living descendants and, in the absence of descendants, as the beneficiary shall appoint. In default of appointment, the beneficiary's share shall be paid over to the then living descendants of Daughter or, in the absence of descendants of Daughter, to the then living descendants of Daughter's siblings. One child of Daughter predeceased Daughter and has living descendants.

You propose to divide Trust into four separate trusts, one for each surviving child of Daughter, and one for the surviving descendants of the child who predeceased Daughter. Generally, each trust will be modified to have as its trustee the child or grandchild who will take upon Daughter's death. The assets of Trust will be distributed in kind on a pro rata basis among the four trusts. Daughter will remain the life beneficiary of each trust and, with the exception of the division of the Trust and the naming of new trustees, the terms of each separate trust are the same as those of Trust.

LAW AND ANALYSIS

Section 61(a)(3) of the Internal Revenue Code provides that gross income includes gains derived from dealings in property.

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 § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss, on the sale or exchange of property, must be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A, 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.

Rev. Rul. 56-437, 1956-2 C.B. 507, holds that the conversion of a joint tenancy in stock to a tenancy in common in order to eliminate the survivorship feature and the partition of a joint tenancy in stock are not sales or exchanges. See Rev. Rul. 69-486, 1969-2 C.B. 159 (pro rata distribution of trust assets not a sale or exchange).

Similar to the situation in Rev. Rul. 56-437, divisions of trusts are also not sales or exchanges of trust interests where each asset is divided pro rata among the new trusts. Here, Trust's assets will be distributed in kind on a pro rata basis among the four separate trusts. Accordingly, the modification and severance of Trust will not result in the realization of gain or loss to any beneficiary, Trust, or severed trust under §§ 61 and 1001.

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.

This ruling is directed only to the taxpayer 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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

Katherine A. Mellody
Senior Technician Reviewer, Branch 4
Office of the Associate chief Counsel
(Passthroughs & Special Industries)

Enclosure: copy of this letter