

## Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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PLR-137634-06

Date:

August 9, 2007

Grantors =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Date 1 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Trust 5 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Trustee 1 =

Trustee 2 =

State =

Trustee 3 =

Dear :

This letter responds to your letter, dated August 1, 2006, requesting that the proposed modifications to Trust will not cause certain trusts to lose their status as exempt from the Generation-Skipping Transfer (GST) tax.

Grantors created Trust 1, Trust 2, Trust 3, and Trust 4 (collectively the "grandchildren's trusts") on Date 1. The grandchildren's trusts have identical trust terms except for the identity of the primary beneficiary. Trust 1 is for the benefit of Grandchild 1 and her lineal descendants. Trust 2 is for the benefit of Grandchild 2 and her lineal descendants. Trust 3 is for the benefit of Grandchild 3 and her lineal descendants. Trust 4 is for the benefit of Grandchild 4 and her lineal descendants. Grantors created Trust 5 on Date 2 for the benefit of their great-grandchildren.

The provisions of the trusts governing trustee succession were modified by court order on Date 3. On Date 4, Trust 5 was reformed to conform with the Grantors' intentions regarding accumulation and distribution of income for the benefit of the Trust 5 beneficiaries. On Date 5, the Service ruled that the reformation of Trust 5 would not cause Trust 5 to lose its status as exempt from the GST tax. The Service further ruled that the reformation would not cause any party to be subject to income or gift tax.

Date 1, Date 2, and Date 3 are before September 25, 1985. Date 4 and Date 5 are after September 25, 1985. Trustee 1 and Trustee 2 currently serve as trustees of Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5. The taxpayer represents that Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 were irrevocable on September 25, 1985, and no additions, actual or constructive, have been made to any of the trusts after September 25, 1985.

The trustees propose to modify various administration provisions of the trusts.

Paragraph 3 of the each trust agreement as amended on Date 2, provides that there shall be at least two co-trustees, either individual or corporate. Trustee 2 and any co-trustee who is a lineal descendant of the Grantors shall have the right to appoint his or her successor. After reaching thirty-five years of age, each grandchild has the right to become a co-trustee or appoint a co-trustee and successors. If there are more than three co-trustees serving, a majority may remove any co-trustee who is not a lineal descendant of the Grantors. Trustee 1 may remove any co-trustee other than a grandchild of the Grantors or a co-trustee appointed by a grandchild of the Grantors. If there are not at least two co-trustees, a successor co-trustee shall be named by a co-trustee who is a lineal descendant of the Grantors. If there is none, a successor shall be named by the co-trustee and a majority of the then adult income beneficiaries and the guardians of any other income beneficiaries.

Paragraph 3 of each trust will be replaced with a new paragraph 3. The new paragraph 3(a) will provide that the current co-trustees shall be Trustee 1 and Trustee 2 (collectively, "current co-trustees"). If either current co-trustee becomes unwilling or

unable to serve, the remaining current co-trustee and the independent trustee shall serve as co-trustees and thereafter there shall be an independent trustee serving at all times. If neither current co-trustee is willing and able to serve, the successor co-trustees shall be the independent trustee and those of the Grantors' grandchildren who are willing and able to serve and thereafter there shall be at least three co-trustees serving at all times, one of whom shall be the independent trustee and the rest of whom shall be referred to as "other trustees."

The new paragraph 3(b) shall provide that at any time both current co-trustees are serving, the eligible voters, by a vote of at least 60% of the eligible votes, shall have the power to remove either acting current co-trustee. At any time that only one current co-trustee is serving, the eligible voters shall have the power to remove that acting current co-trustee with a vote of at least 55% of the eligible votes.

The new paragraph 3(c) shall provide that each other trustee shall have the power to designate his or her immediate successor unless that other trustee is removed by the eligible voters pursuant to paragraph 3(d). Except as otherwise provided in paragraph 3(d), if an other trustee becomes unwilling or unable to serve and no successor designated by that other trustee is willing and able to serve, the remaining co-trustees may (but are not required to) appoint a successor other trustee to fill that vacancy if at least two other trustees are then serving or shall be required to appoint a successor other trustee if the vacancy would result in fewer than two other trustees serving. In the event that fewer than two other trustees are serving and the vacancy is not filled as provided in the preceding provisions of paragraph 3(c), that vacancy may be filled by a successor other trustee appointed by the eligible voters by a vote of at least 60% of the eligible votes. In the event that fewer than two other trustees are serving and the vacancy is not filled as provided in the preceding provisions of paragraph 3(c), a successor other trustee shall be selected by a court of competent jurisdiction. All trusts created under the trust agreements that hold interests in the same family business shall have the same other trustees.

The new paragraph 3(d) shall provide that the eligible voters, by a vote of at least 60%, shall have the power to remove any acting other trustee. If the removal would reduce the number of other trustees below two, the eligible voters may not remove the other trustee unless they appoint a successor other trustee by a vote of at least 60% of the eligible voters. At any time that two or more other trustees are serving, the eligible voters, by a vote of at least 60%, may appoint one or more additional other trustees to serve with the co-trustees.

The new paragraph 3(e) shall provide that the original independent trustee will be Trustee 3. If Trustee 3 or any successor independent trustee is or becomes unwilling or unable to serve and if the remaining current co-trustee is serving, the remaining current co-trustee shall select a successor independent trustee. Except as otherwise provided, each independent trustee shall have the power to designate his or her immediate

successor. If an independent trustee fails to name a successor, the other trustees who are then serving shall appoint a successor independent trustee. If the other trustees fail to appoint a successor, the eligible voters, by a vote of at least 60%, may appoint a successor independent trustee. If the eligible voters fail to appoint a successor, a court of competent jurisdiction shall appoint a successor independent trustee. No person who is a related or subordinate party as defined in § 672(c) of the Code with respect to any income beneficiary of Trust 1, Trust 2, Trust 3, Trust 4, or Trust 5 shall be eligible to serve as an independent trustee.

The new paragraph 3(f) shall provide that at any time that an independent trustee other than Trustee 3 is serving with the remaining current co-trustee, the remaining current co-trustee shall have the power to remove that independent trustee and to appoint a successor independent trustee. At any time that Trustee 3 is serving as the independent trustee with the remaining current co-trustee or at any time that neither current co-trustee is serving, the eligible voters, by a vote of at least 60%, shall have the power to remove the independent trustee and to appoint a successor.

The new paragraph 3(g) shall provide that the eligible votes shall be determined in the following manner. Trustee 1 and Trustee 2 shall each be entitled to three votes. Each living grandchild of the Grantors shall be entitled to one vote. The descendants of each Grantors' grandchild who is then deceased and survived by descendants collectively shall be entitled to one vote, which shall be allocated among those descendants (who shall be permitted to cast their votes independently and shall not be required to vote as a block), by right of representation. For purposes of the preceding provisions of this paragraph, any person who has resigned as an eligible voter, is incapacitated, or is a minor shall be treated as if he or she were deceased.

The new paragraph 3(n) shall provide that except as otherwise provided, if there are two co-trustees serving, all decisions shall be unanimous and if more than two co-trustees are serving the decision of the majority shall control. If a trustee is prohibited under the terms of the trust agreement from exercising any power, authority, or discretion, that power, authority, or discretion shall be exercisable by any co-trustees who are not so prohibited or, if there are none, shall not be exercisable.

The new paragraph 3(t) shall provide that no trustee shall exercise any power, authority, or discretion otherwise granted to the trustees in the trust agreement if that power, authority, or discretion would cause that trustee to be treated as having a general power of appointment under § 2041 of the Code. Any power, authority, or discretion that a trustee is prohibited from exercising pursuant to the provisions of this paragraph shall be exercisable by any acting trustees who are not so prohibited, or if there are none, shall not be exercisable.

The trusts' assets consist of bank accounts and ownership interest in a limited liability company that manages farming enterprises, commercial real estate, and stock

portfolios. The trustees also propose to modify certain trust provisions relating to the trustees' powers and duties in connection with managing the limited liability company. The provisions allow trustees to serve in management positions in the limited liability company and protect against liability for management decisions except in the case of gross negligence, bad faith, or reckless indifference. The proposed modifications further permit amendments to the trust agreements with respect to the provisions relating to the management of the limited liability company and the exculpation of the trustees by a vote of 60% of the eligible voters. The eligible voters are not authorized to change any other terms of the trusts or to retroactively increase a trustee's liability.

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) of the Generation-Skipping Transfer Tax Regulations 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 relate 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 gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C)) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification

does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(2) provides that for purposes of this section, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust. In addition, administration of a trust in conformance with applicable local law that defines the term income as a unitrust amount (or permits a right to income to be satisfied by such an amount) or that permits the trustee to adjust between principal and income to fulfill the trustee's duty of impartiality between income and principal beneficiaries will not be considered to shift a beneficial interest in the trust, if applicable local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of §1.643(b)-1 of the Income Tax Regulations.

In the present case, Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 are considered irrevocable because neither § 2038 nor § 2042 apply and each trust was irrevocable as of September 25, 1985. In addition, there have been no actual or constructive additions made to either trust since September 25, 1985. Accordingly, Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 are exempt from GST tax.

The proposed modifications to Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 are administrative in nature and do not shift a beneficial interest in any trust to any beneficiary who occupies a lower generation than the person or persons who hold the beneficial interest prior to the modifications. In addition, the proposed modifications do not extend the time for vesting of any beneficial interest beyond the period provided for in the original trust agreements. Thus, the proposed modifications of Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 will not constitute an addition to any of the trusts, will not cause any of the trusts to lose their exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and §26.2601-1(b)(2)(i)(A), and will not subject distributions from any of the trusts to the GST tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representatives.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman  
Senior Technician Reviewer, Branch 2  
Passthroughs & Special Industries

cc: