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Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-119731-99

Date:

December 19, 2000

Re:

Legend

Trust =

Grantor =

Grantor's Spouse =

Daughter =

State =

Trustee =

Dear :

This is in response to your letter of October 20, 2000, and prior correspondence, requesting a ruling on the income, estate, and generation-skipping transfer (GST) tax consequences of a proposed reformation of Trust.

In 1935, Grantor and Grantor's Spouse created Trust for the benefit of Daughter. The instrument states that "[Grantor] and [Grantor's Spouse] are the parents of [Daughter] ... and it is the desire and purpose of the said [Grantor] and [Grantor's Spouse] to create an irrevocable trust, known as the [Daughter] Trust Estate, for the use and benefit of [Daughter]... ." Trustee is currently acting as trustee of Trust

Article I, Section 1, provides that the affairs of the Trust shall be administered by one trustee, in conjunction with the advisory board, whose term of office shall continue for and during the entire period or duration of Trust, unless the same be terminated by voluntary resignation, or insanity established by judgement of a court of competent jurisdiction, or for breach of personal trust or by death.

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Article I, Section 2, provides that, in the case of death, resignation or disqualification, as defined in Section 1, to act as trustee, the advisory board, after having filled the vacancy in the board, shall have power to fill the vacancy in the trusteeship by the election of a member of the board as the trustee (only members of the board being eligible to the trusteeship). In such event, the successor shall succeed to the same rights and powers and be subject to the same duties and liabilities as the predecessor, and when any new trustee is so elected, chosen or appointed by the advisory board, the Trust estate shall immediately vest in the new trustee without any further act or conveyance or any kind.

Article I, Section 3, provides that, in all cases, the trustee shall hold office until the successor is elected and qualified, except in case of death, in which event the advisory board shall have the power to manage and control the estate until a successor trustee is chosen, but it shall be the duty of the advisory board to first fill the membership of the board and then select a successor trustee immediately after vacancy occurs.

Article I, Section 4(c), provides that all investments shall be made and the legal title to all property shall be held, and all property managed, controlled and disposed of, absolutely by the trustee and his successors under the Trust, with the advise and consent of the advisory board. The section further provides that the trustee, with the advice and consent of the advisory board:

shall have full power to buy, sell, import, export and generally to deal in, exploit, mine, drill, and explore land or leases that the trust may own or may acquire, containing or believed to contain gas, petroleum, or other mineral deposits, and to manufacture the products or by-products thereof into finished articles; to purchase or otherwise acquire, own, and hold real estate or personal property which said Trustee, acting with the consent of said Advisory Board as herein provided, may deem advantageous to said Trust Estate; to sell, convey, assign, transfer, lease, mortgage, pledge, encumber or otherwise dispose of any of the property; to take, own, hold, deal in mortgages or other liens, and to lease, sell, exchange, transfer or in any manner whatever dispose of any property, real, personal or mixed, within or without State of [State], wherever situated; to guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of capital stock or bonds or securities or evidences of indebtedness issued or created by any corporation of any kind or character, or any bonds or evidences of indebtedness of any Government or subdivision thereof, wherever situated, and while owner of said stock, may exercise all of the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as natural persons might or could do, and to enter into, make and perform contracts of every kind or character with any person, firm, association or corporation of any

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kind or character, or whenever situated, and without limitation as to the amount, and to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bill of exchange, warrants, bonds, debentures and other negotiable or transferable instruments of evidences of indebtedness, whether secured by mortgage or otherwise; and to have offices, conduct its business and promote its obligations within and without State of [State] as may be determined from time to time by said Trustee, acting with the consent of said Advisory Board as herein provided, without restriction as to place or amount, and to do any and all other things whether specifically set out herein or not, to the same extent as natural persons might or could do, either alone or acting with others, and in general the said Trustee, consent of the Advisory Board herein provided being first necessary, shall have full power in all matters not hereinabove specified to deal with and use Trust properties and moneys and the income, proceeds, profits and revenues arising therefrom, and to manage and conduct the Trust hereby created in any manner that said Trustee and said Advisory Board should see fit, and to execute and make all such agreements deeds, mortgages, releases, lease contracts and instruments of all kinds, and to do such other things as may be proper for any of said purposes above named, and to do anything else properly incident thereto that to the said Trustee and the said Advisory Board may seem reasonable and in the best interest of said Trust Estate, including the right to sell properties on credit or for cash, or partly on credit, and the naming of particular powers herein shall not be held to exclude power to do any other things which may be deemed to the interest or advantage of said Trust Estate.

Article I, Section 5, provides that the trustee or any member of the advisory board, shall not be liable in any event for the act, or omission to act, of any other person whomsoever, whether employed by the trustee and board or not, nor shall they be liable for any act of their own, unless such act shall constitute a legal tort or breach of contract.

Article I, Section 6, provides that the trustee or the advisory board shall have no power to bind a beneficiary personally, and independently of the beneficiary interest in Trust, but in every written contract which they shall enter into relating to the business of Trust, specific reference shall be made to the declaration of trust and the person, firm, corporation, or association so contracting with them shall look only to the funds and properties of the Trust under the contract held by the trustee and advisory board for the payment of any judgement or decree, debts, damage, and for money or other obligation that may become due and payable, and neither the trustee nor beneficiary under this trust nor any member of the advisory board, present or future, shall ever be personally liable therefor, or for any debt incurred or engagement or contract entered into by the trustee or by an officer agent servant or employee acting under him, for and on behalf

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of the Trust, or for any other form of liability, whether arising from contact, express or implied, or out of tort, or in any other way whatsoever; it being the purpose of the Trust to vest full power and absolute control of the trust properties in the trustee and advisory board, and to exempt them and the beneficiary, present and future, from any manner of liability whatsoever.

Article I, Section 7, provides that the trustee, with the consent of the advisory board, with the power to establish and maintain offices and the authority to appoint agents, attorneys, accountants, and employees as may appear to be expedient, beneficial and advantageous to the best interest of the Trust, and to provide for and pay out of Trust, any compensation, fees, commissions or expenses incurred in the management thereof and compensation for services rendered, provided, however, that any charges made by the trustee for services rendered by the trustee to the Trust shall be approved by the other two members of the advisory board.

Article I, Section 9, provides that the trustee shall have no power to transact any business whatsoever affecting the Trust, except the endorsement of cash items "for deposit only," and except the signing of checks against funds on deposit for purchases made on behalf of the Trust or in payment of operating expenses, the aggregate amount of the checks not to exceed \$500.00 in any one calendar month, without the consent in writing of one member of the advisory board other than himself. This section shall be construed as the definition of expressions requiring the advice and/or consent of the advisory board.

Article II, Section 3, provides that in the case of death, resignation, mental incompetency established by judgment of a court of competent jurisdiction, or other disability to act, of any or either of the members of the advisory board, the remaining two members of the board shall have the power to fill the vacancy in the board, and it shall be their duty to fill the vacancy immediately, to the end that the advisory board shall at all times consist of three members, except the minimum interval that may transpire between the occurrence of a vacancy and the filling of the vacancy by the other members of the board, and the members of the board shall continue to serve and function as such during the entire life of the trust estate.

Article II, Section 4, provides that the powers of the advisory board and its members shall be and are limited to the following:

- (a) to keep its membership of three persons full by elections and designations;
- (b) to see that the office of the trusteeship is filled;
- (c) to determine and approve, by the unanimous assent of all three members, the compensation, if any, to be paid to the trustee for personal services rendered to the Trust; and

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(d) to advise the trustee on any matters concerning the trust estate, and cooperate with him in any transaction that in the judgement of the members may be in the best interest of the trust estate. The joint action of the trustee and at least one other member is necessary to the transaction of all business, except provided in Article I, Section 9.

Article III, Section 1, provides that no beneficiary can require distribution of trust corpus or partition or termination of the trust.

Article III, Section 2, provides that the death, insolvency or bankruptcy of the beneficiary hereunder, or the transfer of the beneficiary's interest in any manner, or by descent or otherwise, during the continuance of the Trust, shall not operate as a dissolution of nor terminate the Trust, nor shall it have any effect whatever upon the Trust, its operation or mode of business, nor shall it entitle her heirs or assigns or representatives to take any action in the courts of law or equity against the estate, its trustees or property or its business operations of any kind, all of which shall remain intact and undisturbed thereby; but they shall succeed only to the rights of the original beneficiary.

Article III, Section 3, provides that, at the time of the death of the beneficiary (Daughter), her equitable interest in the Trust, unless disposed of otherwise by the beneficiary, shall pass to and vest in her heirs in accordance with the laws of descent and distribution then in force, applicable to the equitable interest of the beneficiary in the Trust. The term "Beneficiary" applies not only to Daughter but to all her successors to beneficial interests under the Trust.

Article IV, Section 1, provides that all properties for or on account of the Trust shall be conveyed to the "[Daughter] Trust Estate" and all business transactions whatsoever of the trust estate shall be conducted in the name of "[Daughter] Trust Estate" and the legal title to all property so acquired by the trust estate shall be vested in the trustee.

Article IV, Section 2, provides that all cash or funds of Trust shall be kept in one bank that is to be designated by at least two members of the advisory board. The bank may be changed at any time by consent in writing of the two members of the advisory board.

Article IV, Section 3, provides that the trust will continue during Daughter's life and for a period of 21 years after her death. On termination, the trustee is to distribute the trust corpus among the then existing beneficiaries.

Article IV, Section 4, provides that the beneficiary may receive from time to time, a portion of the net profits accruing to the Trust, as the trustee, acting with the advice and consent of the advisory board, may see fit to pay over and deliver to the

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beneficiary. No duty is imposed upon the trustee to distribute net profits, but the power is conferred upon him, acting with advice and consent of the advisory board, to do so, and in exercising this discretion, the trustee and advisory board must give full consideration to the interest of both the beneficiary and the Trust.

Trustee has petitioned the local court requiring approval for a number of proposed changes to the Trust discussed below. In addition, trustee has requested a construction of the instrument with respect to certain provisions, discussed below.

Amendments to Article I

1. Amendment to Article I, Section 1. Trustee has requested court approval to modify Article I, Section 1, to provide that:

The affairs of the said Trust Estate shall be administered by one Trustee, in conjunction with the Advisory Board as hereinafter provided, whose term of office shall continue for and during the entire period or duration of the said Trust, unless the same shall be terminated by voluntary resignation, insanity established by judgement of a court of competent jurisdiction, for breach of personal trust, by death, or by removal in accordance with Section 1. A Trustee may be removed (with or without cause) by the unanimous agreement of the other two Advisory Board members. In the event the other two Advisory Board members shall determine that a Trustee should be removed from office, they shall memorialize the determination in writing and shall present the writing to the trustee, and upon the expiration of thirty (30) days of the receipt of the writing by the Trustee, the Trustee shall be deemed to be removed from office. A Trustee may resign from office by presenting written notice of his intent to resign to the other Advisory Board members, and upon the expiration of sixty (60) days of the receipt of the notice by the Advisory Board members, the Trustee shall be deemed to have resigned from office.

2. Amendment to Article 1, Section 2. Trustee has requested approval to modify Article I, Section 2, by adding the word "removal" after the word "death."

Article I, Section 2, will also be amended by adding a sentence to the end of the section to provide that, in the case of death, removal, resignation or disqualification, as defined in Section 1, of a trustee, the Advisory Board, after having filled the vacancy in the board, shall have power to fill the vacancy in the trusteeship by the election of a member of the board as the trustee (only members of the board being eligible to the trusteeship), and, in such event, his successor shall succeed to the same rights and powers and be subject to the same duties and liabilities as his predecessor, and when any new trustee is so elected, chosen or appointed by the Advisory Board, the trust

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estate created shall immediately vest in the new trustee without any further act or conveyance or any kind; provided, however, that if a Beneficiary is serving as a member of the Advisory Board at the time the vacancy in trusteeship is filled in accordance with the foregoing, the vacancy shall not be filled with the Beneficiary or a person or entity that is related or subordinate to the Beneficiary within the meaning of § 672(c) of the Internal Revenue Code.

3. Amendment to Article 1, Section 3. Trustee has requested that Article I, Section 3, be modified by adding the words “or removal” after the word “death.”

4. Amendment to Article I, Section 4(c). Trustee has requested that the following language be added to the end of Article I, Section 4(c):

In determining whether the Trustee and Advisory Board have made an appropriate investment decision under the trust agreement and applicable state law, such determination shall be made taking into consideration the investment of all the assets of the trust rather than by considering the prudence of only a single investment of the trust in isolation. The Trustee may acquire and retain every kind of property and every kind of investment that the Trustee determines to be in the best interest of the Trust. In applying the foregoing standards to a particular investment or management issues, the Trustee and Advisory Board may rely upon interpretations under applicable state law, including Section 113.056 of the [State] Trust Code and any successor statute or statutes and commentaries under analogous uniform laws and the Prudent Investor Rule of the then-current Restatement of the Law of Trusts; provided, however, that no such interpretation (including a decision by a court interpreting [State] law) or commentary shall be binding upon the Trustee or the Advisory Board to the extent it is more restrictive than the standard set forth above.

The Trustee may delegate to an agent or agents any or all of the powers and duties, discretionary or otherwise, to purchase or otherwise acquire, sell, pledge or otherwise dispose of stocks, bonds, securities and other investments on behalf of the Trust and such other powers and duties with respect to investments on behalf of the Trust and management of Trust assets that a prudent person exercising fiduciary discretion in similar circumstances would so delegate. The Trustee shall exercise care, skill and caution in establishing the scope and specific terms of any delegation, and shall keep reasonably informed in order to monitor the execution of the delegated power or duty. For purposes of Article I, Section 9 hereof, the advice and consent of an Advisory Board member shall be required only with respect to the delegation of authority to a single agent over assets equal in value in the aggregate to the percentage of the

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Trust assets described in Article I, Section 9. Section 113.060 of the [State] Trust Code (or its successor statute or statutes) shall not apply to this Trust. The Trustee's compliance or failure to comply with the terms and conditions of Section 113.060 of the Trust Code in the delegation of investment authority shall not be determinative as to the satisfaction of the Trustee's duty with respect to delegation of investment authority under this Section.

Any person dealing with the Trustee may rely upon the Trustee's authority to enter into and consummate any transaction involving the Trust Estate or take any other action on behalf of the Trust Estate upon the receipt by such third party of a written declaration signed by the Trustee stating that the Trustee, in good faith, believes he has the authority to enter into and consummate the particular transaction or take such other action on behalf of the Trust Estate.

5. Amendment to Article I, Section 5. Trustee has requested that Article I, Section 5, be deleted and replaced with a new Section 5. As amended, Article 1, Section 5, will provide as follows:

No individual serving as Trustee or as a member of the Advisory Board shall be liable to any person for negligence, but shall be liable only for acts or omissions resulting from the gross negligence of the Trustee or member of the Advisory Board, or from the Trustee or member acting in bad faith, or in a manner that is intentionally adverse or with reckless indifference to the interests of the beneficiary. An individual serving as Trustee or as a member of the Advisory Board who engages in or approves a transaction or arrangement described in Article I, Section 12, in the good faith belief that the transaction or arrangement was not described in Article I, Section 12, shall not be liable for acts or omissions occurring in connection with such transaction or arrangement solely on the grounds that the transaction or arrangement was, in fact, described in Article I, Section 12, or that the procedure described in Article I, Section 12, was not followed. Furthermore, no Trustee or member of the Advisory Board shall be liable for the actions or omissions of any prior Trustee or member of the Advisory Board. Any Trustee or Advisory Board member may accept the trust assets as delivered to it by a predecessor in office without requiring an accounting of the Trust Estate and shall only be liable for assets actually received.

6. Addition of a new Section 5A to Article I. Trustee has requested that a new Section 5A be added to Article I after Section 5. The new Section 5A will provide as follows:

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The Trust shall indemnify any individual serving as Trustee or as a member of the Advisory Board who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person (i) is or was a Trustee or member of the Advisory Board of the Trust or (ii) while a Trustee or member of the Advisory Board is or was serving at the request of the Trust as a Trustee, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, Trust employee benefit plan or other enterprise, against all expenses (other than taxes, penalties, judgements, settlements or expenses of correction), including attorneys' fees, arising from any actions, decisions, or failure to act on the part of the Trustee or Advisory Board member in connection with the management or administration of the Trust; provided, however, that indemnification of the Trustee or Advisory Board member shall not be permitted in the event the expense arises from an action or failure to act by the Trustee or Advisory Board member taken or made in bad faith or in a manner that (i) is or was fraudulent, grossly negligent, or intended to be adverse to the interests of any beneficiary of this Trust, whether that beneficiary's interest is vested or contingent and (ii) is inconsistent with the terms of the Trust and the laws of the State of [State]. The Trust shall pay expenses (including attorneys' fees) incurred by such Trustee or Advisory Board member in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding; provided, however, that the payment of expenses incurred by a Trustee or Advisory Board member in advance of the final disposition of the action, suit, or proceeding shall be made only upon receipt of a written statement of the Trustee or Advisory Board member (i) affirming his good faith belief that any expenses resulting from the proceeding would be subject to indemnification under this Section, and (ii) stating the Trustee's or Advisory Board member's agreement to repay all amounts advanced if it should be ultimately determined that such person is not entitled to be indemnified under this Section or otherwise. The written statement referred to in the preceding sentence shall be delivered to, and all determinations under this Section shall be made by, the other two members of the Advisory Board. The Trust may purchase and maintain insurance or a similar agreement (including, but not limited to, self-insurance, a letter of credit, guarantee of surety arrangement) on behalf of an individual serving as Trustee or as a member of the Advisory Board against any liability asserted against such person and incurred by such person in such a capacity or arising out of the status of the person, whether or not the Trust would have the power to indemnify the person against the liability under this Section. Notwithstanding any other provision of this Trust Agreement, the resignation or removal (with or without cause) from office of a Trustee or Advisory Board member shall

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not deprive the Trustee or Advisory Board member of his or her right to indemnification under this Section 5A, regardless whether such removal or resignation occurs before or after the initiation of an action, suit or proceeding against the Trustee or Advisory Board member.

8. Amendment to Article I, Section 9. Trustee has requested that Section 9 be replaced with a new Section 9. As amended, Section 9 will provide:

The Trustee shall have the authority to conduct any business and other financial transactions and to consummate the same without the approval of the Advisory Board; provided however, that the Trustee must obtain the prior or contemporaneous written consent of one member of the Advisory Board other than the Trustee to all transactions (including, without limitation, sales, acquisitions, pledges, assignments, and leases) affecting assets and property, the value of which exceeds the lesser of (i) five-hundred thousand dollars (\$500,000), and (ii) one-fourth of one percent (.25%) of the net asset value of the trust estate as determined by the most recent audited financial statements of the Trust prepared in accordance with Article I, Section 10, hereof. All references in this trust agreement to the consent of the Advisory Board shall be to the consent as set forth above, and such consent shall be required only in the circumstances described above.

9. Addition of a new Section 11 to Article I. Trustee has requested that a new Section 11 be added to Article I of the Trust. The new Section 11 will provide:

The Trustee may not make a non-prorata distribution of trust assets upon the death of a beneficiary or upon final termination of the Trust without the prior approval of a court of competent jurisdiction, unless the non-pro rata distribution affects assets and property (in the aggregate), the value of which does not exceed one-hundred thousand dollars (\$100,000) as determined by the most recent audited financial statements of the Trust prepared in accordance with Article I, Section 10, hereof.

10. Addition of a new Section 12 to Article I. Trustee has requested that a new Section 12 be added to Article I of the Trust. The new Section 12 will state that:

The Trustee is authorized to purchase from, sell to, lend funds to, or otherwise deal with (A) the Trustee or members of the Advisory Board only in their capacities as partners in a partnership, officers or directors of a corporation or other entity, or as executor, administrator or guardian of the estate of any person; (B) an affiliate of the Trustee (or Advisory Board members); (C) a director, officer employee, employer, partner or other business associate of the Trustee (or Advisory Board members) or the

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Trustee's (or Advisory Board members') affiliate; (D) a relative of the Trustee (or Advisory Board members); (E) any beneficiary of the trust created hereunder; (F) any partnership, corporation, or other entity in which the Trustee (or Advisory Board members) may have an interest; or (G) any trust with respect to which the Trustee (or Advisory Board members) serves as fiduciary or has legal or equitable interest to the same extent and manner and for the same purposes as provided in respect of transactions with disinterested parties. Notwithstanding the foregoing, the Trustee and Advisory Board members, in their individual capacities, are expressly authorized to acquire an interest in the subject matter of the Trust, provided that the procedure set forth in Section 12 is followed with respect to the investment, and the interest is not acquired directly from the Trust. Advisory Board members are authorized to consent to any transaction described in the preceding sentence; provided, however, that, notwithstanding any other provision (including Article I, Section 9) no such transaction may be consummated without (i) providing to the Advisory Board notice of the facts giving rise to the potential self-dealing or conflict of interest, and (ii) obtaining the unanimous consent of the Advisory Board; however, with respect to transactions involving assets that are equal or greater in value to the amount described in Article I, Section 11, where the proposed transfer is between separate trusts created hereunder that have at least two members of the Advisory Board in common, the transaction may not be consummated without obtaining either (i) appraisals of the assets at issue by qualified, independent appraisers, or (ii) the consent of all current adult beneficiaries of the particular trusts involved in the transaction. The Trustee and Advisory Board members shall be held to the same standard of liability in respect of transactions described in Section 12 as in respect of transaction with disinterested parties.

11. Addition of a new Section 13 to Article I. Trustee has requested that a new Section 13 be added to Trust that will provide that no trustee or advisory board member need post bond for so acting.

Amendments to Article II

1. Amendment to Article II, Section 3. Trustee has requested that the following language be added to the end of Article II, Section 3:

[P]rovided, however, that if a Beneficiary is serving as a member of the Advisory Board at the time a vacancy in the Advisory Board is filled, the vacancy shall not be filled with the Beneficiary or a person or entity that is related or subordinate to the Beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

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2. Amendment to Article II, Section 4(d). If the court approves the amendment to Article I, Section 9, as indicated above, the Trustee will also request that Article II, Section 4(d), outlining the powers and duties of the Advisory Board, in its current form be deleted and replaced. As revised, Article II, Section 4(d), will provide:

Except with respect to transaction and business described in Article I, Section 9 hereof as to which the consent of the Advisory Board is not required, to advise with the Trustee on any matters concerning the Trust Estate, and cooperate with him in any transaction that in the judgment of the members may be to the best interest of the trust estate, the joint action of the Trustee and at least one other member (or both members, in the case of transactions or arrangements described in new Article I, Section 12 hereof) being necessary to the transaction of business as required by Article I, Section 9 hereof. The Trustee shall not be required to seek the advice of the Advisory Board with respect to any business or transaction described in Article I, Section 9 as to which the consent of an Advisory Board member is not required.

3. Amendment to Article II, Section 4(e). Trustee has requested that Article II, Section 4(e), be replaced with a new Article II, Section 4(e). The new section will provide that:

Vacancies may exist in the membership of the Board as the result of death, resignation, mental incompetency established by judgement of a court, by any member violating the trust conferred upon him by the instrument, or by removal by the other members of this Board in accordance with this paragraph. An Advisory Board member may be removed (with or without cause) by the unanimous agreement of the other two Advisory Board members; provided, however, that if a Beneficiary is serving as a member of the Advisory Board at the time a vacancy in the Advisory Board is filled, the vacancy shall not be filled with the Beneficiary or a person or entity that is related or subordinate to the Beneficiary within the meaning of Section 672(c) of the Internal Revenue Code. In the event the other two Advisory Board members shall determine that an Advisory Board member should be removed from office, they shall memorialized such determination in writing, and shall present such writing to the Advisory Board member, and upon the expiration of thirty (30) days of receipt of such writing by the Advisory Board member, such member shall be deemed removed from office. An Advisory Board member may resign from office by presenting written notice of his intent to resign to the other Advisory Board members, and upon the expiration of sixty (60) days of the receipt of such notice by the Advisory Board members, the resigning Advisory Board member shall be deemed to have resigned from office.

Amendments of Article IV

1. Amendment to Article IV, Section 1. Trustee has requested that Article IV, Section 1, be replaced with a new Article IV, Section 1. The new section will provide as follows:

During the lifetime of Daughter, all properties acquired for or on account of the Trust shall be conveyed to '[Daughter] Trust Estate' and all business transaction whatsoever of the Trust Estate shall be conducted in the name of '[Daughter] Trust Estate,' and the legal title to all property so acquired by the Trust Estate shall be vested in the Trustee. From and after the death of Daughter, each separate trust created from the Trust Estate for the benefit of each person who becomes a beneficiary of the trust estate shall be designated as follows: '[Daughter] Trust Estate: The [Beneficiary's name] Trust'. The Trustee of each such trust for the benefit of a Beneficiary shall hold all property and conduct all business and other transactions under the name of each such trust.

1. Deletion of Article IV, Section 2. Article IV, Section 2, requires that all cash be deposited in one bank. Trustee has requested that this provision be deleted.

2. Amendment to Article IV, Section 3. As amended, the original Section 3 will become Section 2 and the original Section 4 will become Section 3. In addition, Trustee has requested that Article IV, Section 2, be amended to state that the trust will continue during Daughter's life and for a period of 21 years after her death. On termination, the Trustee is to distribute the trust corpus among the then existing beneficiaries. Upon the death of Daughter, all separate trusts created from Trust shall be administered by the same Trustee and Advisory Board that are serving at the time of Daughter's death; provided however, that from and after the earliest of (i) two years from the date of death of Daughter and (ii) the date on which all of the separate trusts have been fully funded with assets from the Trust, nothing in the trust instrument shall be construed to prohibit the separate trusts from being administered by different Trustees and Advisory Board members. Likewise, upon the death of a beneficiary who succeeds to the beneficial interest of Daughter (either directly or upon the death of another beneficiary) (a successor beneficiary), the separate trusts for those who succeed to the beneficial interest of the deceased successor beneficiary shall be administered by the same Trustee and Advisory Board that are serving at the time of the deceased successor beneficiary's death; provided however, that from and after the earliest of (i) two years from the date of death of the successor beneficiary and (ii) the date on which all of the separate trusts to be created have been fully funded with assets from the trust held for the benefit of the deceased successor beneficiary, nothing within the instrument shall be construed to prohibit the separate trusts from being administered by different Trustees and Advisory Board members.

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3. Addition of new Section 4 to Article IV. Trustee has requested that a new Section 4 be added to Article IV to provide as follows:

The Trustee shall cause to be maintained, for so long as the Trustee determines to be appropriate after consultation with legal counsel (the "Retention Period"), under the control of the Trustee sufficient records to permit the Trustee to comply with all applicable state law requirements to account to the Beneficiary of the Trust Estate and all applicable record keeping requirements for federal tax purposes; provided that, if the Trustee maintains for the Retention Period all financial statements and audits reports thereon, as described in Article I, Section 10, all federal, state, and local tax returns and reports and supporting worksheets and schedules, correspondence, transaction activity statements itemizations of expenditures over \$5,000 per expenditure, documentation supporting expenditures over \$20,000 per expenditure, and all written consents of the Advisory Board members obtained pursuant to Article I, Section 9, or Article I, Section 12, the Trustee shall be deemed to have satisfied all requirements of Section 4 and state and federal law relating to retention of records. The Trustee shall not be required to keep any records other than the financial statements and audit reports for any period longer than the Retention Period, and the Trustee and Advisory Board members shall have no liability to any person for the destruction of documents upon the expiration of the Retention Period or for the inability to give an accounting based on documents that have been destroyed in accordance with Section 4 when determining the duration of the Retention Period, the Trustee shall be entitled to rely upon an opinion by legal counsel that a proposed Retention Period is "more likely than not" to be sufficient for the Trustee to satisfy its responsibilities under Section 4. For purposes of this Section, records of trust-owned corporations, partnerships, joint ventures, limited liability companies and other business entities shall not be considered records of the trust estate, and such records shall be maintained, stored, and destroyed in accordance with the judgement of the officers, directors, and managing partners of the entities.

Interpretations

1. Separate Trusts. Trustee has requested that the local court interpret the trust agreement to require that, after the death of Daughter, separate trusts shall be created for each successor beneficiary.

2. Interpretation of terms "net profit" and "net earning." Trustee has requested that the court interpret the terms "net earning" and "net profits" as they appear in the Trust Agreement to mean "income" under the State Trust Code and applicable state law.

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3. Accounting Requirements. Trustee has requested that the local court rule that the preparation, auditing and disclosure of financial statements in accordance with Article I, Section 10, of the Trust Agreement to date represents and constitutes all of the accounting required of the Trustee under State law and that the Trustee and his predecessors have fully complied with Article I, Section 10, of the Trust Agreement and that no beneficiary of the Trust may request under the State Code or other principal of State law an accounting of the trust estate, for any period ending on or before December 31 of the calendar year prior to the year in which the courts final judgement is entered, in addition to the disclosure of the audited financial statements.

The Trustee has requested the following rulings:

1. If the Probate Court construes the Trust to authorize non-pro rata distributions among the new trusts to be established after the death Daughter, such non-pro rata distributions shall not be treated as a prorata distribution followed by a taxable sale and exchange of assets between distributees.

2. Neither the granting of the relief requested in the petition nor Daughter's or successor beneficiaries' consent thereto will constitute the exercise of a general power of appointment under § 2041 or § 2514 of the Internal Revenue Code.

3. Neither the granting of the relief requested in the petition nor the Daughter's and successor beneficiaries' consent thereto will constitute the creation of a new power of appointment under § 2041 and § 2514.

4. The amendments to Trust and the interpretations requested by the Trustee in the petition will not cause Trust or future distributions from Trust to be subject to the generation-skipping transfer tax under § 2601.

Ruling Request No. 1

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

Section 1001 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 over the amount realized.

For purposes of § 1001, in an exchange of property, each party to the exchange gives up a property interest in return for a new or additional property interest. Such an exchange is a disposition under § 1001(a). See § 1.1001-1 of the Income Tax Regulations.

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Rev. Rul. 69-486, 1969-2 C.B. 159, holds that a non-pro rata distribution of trust corpus in kind by mutual agreement of the beneficiaries is subject to gain or loss recognition under § 1001. In the revenue ruling, there was no provision in the trust instrument allowing the trustee to make non-pro rata distributions, and local law did not authorize the trustee to make a non-pro rata distribution of property in kind. Because neither the trust instrument nor local law authorized the trustee to make a non-pro rata distribution, the beneficiaries were viewed as having an absolute right to a ratable in-kind distribution. Accordingly, the revenue ruling holds that the distribution was equivalent to a ratable distribution to the beneficiaries followed by an exchange of property between the beneficiaries that was subject to § 1001.

Trustee represents that local law governing the Trust does not address the treatment of non-pro rata distributions and that the trust instrument does not specifically mention a power in the trustee to make non-pro rata distributions. Taxpayers observe that, generally, in the absence of specific trust language authorizing non-pro rata distributions, the traditional rule of trust law would apply (i.e., the trustee should distribute property pro rata among the beneficiaries). Nevertheless, Taxpayers suggest that the present case is distinguishable from the circumstances presented in Rev. Rul. 60-486.

Trustee states that, although the trust instrument does not specifically authorize the trustee to make non-pro rata distributions, it nevertheless gives the trustee “absolute control” over the trust assets and provides the trustee with such latitude in the administration of the Trust that it is clear that the settlors of the Trust intended the trustee to have the power to make non-pro rata distributions. The trustee, therefore, has asked the probate court to construe the trust instrument as including the power of the trustee to make non-pro rata distributions.¹

Trustee notes that in some circumstances a trust power may be inferred from the trust instrument (even though the power is not conferred in specific words), if it appears from the language used in the trust instrument that such a power was intended to be conferred upon the trustee. Trustee contends that just such an inference should be made here because in the trust instrument the settlors gave the trustee the power to:

manage and conduct the Trust hereby created in any manner that [they] should see fit . . . and to do anything else properly incident thereto that to

¹ In the petition to the probate court, the trustee has also asked the court to construe the trust instrument to require that separate trusts, for state law purposes, be created for each of the successor beneficiaries from and after the death of Daughter. Trustee states that this request is consistent with a 1993 court decision concluding that each heir’s interests (as a successor beneficiary) in the Trust will be separate and the heirs will not be common beneficiaries of an undivided trust; that court also found that, as a consequence, an heir’s interest and powers with respect to the Trust, as successor beneficiary, will extend only to that heir’s respective portion of the Trust.

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the said Trustee . . . may seem reasonable and to the best interest of said Trust Estate, . . . and the naming of particular powers herein shall not be held to exclude power to do any other things which may be deemed to the interest or advantage of said Trust Estate.

Trustee, in the petition, urges the probate court to construe the trust instrument to authorize the trustee to make non-pro rata distributions of Trust assets upon Daughter's death, the death of the successor beneficiaries during the term of the Trust after Daughter's, and upon final termination. The trustee's power to make such non-pro rata distributions would be limited by a new trust provision (Article I, Section 11) that the trustee has asked the court to impose.²

Interpretation and construction of trust provisions is a matter of state law. Based on the taxpayers' representations, and provided that the court determines that under applicable State law the powers of the trustee as set forth in the trust instrument include the power to make non-pro rata distributions, we conclude that, if the probate court construes the trust agreement to authorize the trustee to make non-pro rata distributions among the successor trusts created after the death of the primary beneficiary, such non-pro rata distributions shall not be treated as a pro rata distribution followed by a taxable sale and exchange of assets between the distributees and, thus, will not be subject to recognition of gain or loss from a sale or other disposition of property under §§ 61 or 1001 of the Internal Revenue Code.

Ruling Requests Nos. 2 and 3

Section 2041(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent--

(A) by will, or

(B) 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;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

² The Trustee may not make a non-pro rata distribution of Trust assets upon the death of a Beneficiary or upon final termination of this Trust without the prior approval of a court of competent jurisdiction, unless such non-pro rata distribution affects assets and property (in the aggregate), the value of which does not exceed One Hundred Thousand Dollars (\$100,000) as determined by the most recent audited financial statements of the Trust prepared in accordance with Article I, Section 10 hereof.

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Section 2041(b)(1) defines the term "general power of appointment" as a power exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or creditors of the decedent's estate.

Section 20.2041-1(b) of the Estate Tax Regulations states that the term power of appointment includes all powers that are in substance and effect powers of appointment, regardless of the nomenclature used in creating the power.

Section 20.2041-2(d) provides that a failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase "a complete release" means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the possessor completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half.

Section 2514(a) provides that an exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power, but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. The regulations under § 2514 generally contain provisions similar to the regulations promulgated under § 2041.

The modifications requested in the petition are administrative in nature. Further, the construction of various provisions proposed by Trustee are consistent with applicable State law. Therefore, neither the granting of the relief requested in the petition nor the consent thereto constitutes an exercise of a general power of appointment by Daughter or the successor beneficiaries nor the creation of a new general power of appointment.

Ruling Request 4

Section 2601 imposes a tax on each generation-skipping transfer. Section 2611(a) defines a generation-skipping transfer to mean (1) a taxable distribution, (2) a taxable termination, or (3) a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax does not apply to any generation-skipping transfer made from a trust that was irrevocable on September 25, 1985, except to the extent made from any addition (actual or constructive) made to the trust after that date. Under § 26.2601-1(b)(1)(ii)(A), any trust in existence on September 25, 1985, will be considered an irrevocable trust

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except as provided in §§ 26.2601-1(b)(ii)(B) or (C) (relating to property includible in a grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(v)(C) provides that where a trust described in § 26.2601-1(b)(1) is relieved of any liability properly payable out of the assets of the trust, the person or entity who actually satisfies the liability is considered to have made a constructive addition to the trust in an amount equal to the liability.

A modification of a trust that is otherwise exempt from the generation-skipping transfer tax will generally result in a loss of its exempt or "grandfathered" status if the modification changes the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the trust.

In the present case, Trust was irrevocable on September 25, 1985, and the trustee of Trust has represented that there have been no additions (constructive or otherwise) to Trust after September 25, 1985.

As noted above, the construction of the trust provisions in the petition are consistent with applicable with State law. Further, the trust modifications requested in the petition are administrative in nature and will not result in any change in the quality, value, or timing of any beneficiary's interest in the trust. The proposed modifications requested by the trustee will not confer any additional powers or beneficial interests upon any of the beneficiaries and will not create any additional generation-skipping transfers or increase the amount of any generation-skipping transfers.

We conclude that, if Trust is modified as proposed and if the local court construes the trust in a manner requested by Trustee, Trust's exempt status for generation-skipping transfer tax purposes will not be affected. Further, if no additions are made to the Trust (actual or constructive), all distributions from the Trust and all distributions on termination of the Trust will be exempt from the generation-skipping transfer tax.

We also conclude that neither the granting of the relief by the probate court with respect to non-pro rata distributions nor the actual non-pro rata distributions of assets by the Trustee will result in the relief of any liability properly payable out of the assets of the Trust. Therefore, neither the granting of the relief by the probate court with respect to non-pro rata distributions nor the actual non-pro rata distributions of assets by the Trustee will constitute a constructive addition to the Trust or a new trust.

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.

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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,

Associate Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure (1)
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