

**Internal Revenue Service**

**Department of the Treasury**

Number: **200127037**  
Release Date: 7/6/2001  
Index No.: 643.06-00,1001.00-00,1015.03-00, 1223.00-00, 2033.00-00, 2036.00-00, 2041.01-00, 2501.00-00, 2514.01-00, 2601.00-00

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Person to Contact:

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CC:PSI:4 - PLR-119134-00  
Date: April 10, 2001

Re:

**LEGEND:**

- Decedent =
- Son =
- Spouse =
- Trust =
- Date 1 =
- Date 2 =
- Date 3 =
- Year 1 =
- State Statute =
- State =
- County =
- Q =
- R =
- S =
- T =
- U =
- V =
- W =
- Agreement 1 =
- Agreement 2 =
- Agreement 3 =
- Agreement 4 =

Dear :

This is in response to your authorized representative's letter of September 28, 2000, requesting a ruling concerning the income, estate, gift, and generation-skipping transfer tax consequences of a proposed division of a trust (Trust) under Agreement 4.

On September 27, 1994, your authorized representative requested certain rulings from the Internal Revenue Service concerning the income, estate, gift, and generation-skipping transfer tax consequences of the proposed division of Trust under Agreement 3. Favorable rulings were issued on all issues in that request in a ruling dated March 22, 1995 (TR-31-2565-94). However, since the issuance of that ruling the division of Trust under Agreement 3 has not occurred and an Agreement 4 has been proposed. Therefore, under § 12.05 of Rev. Proc 2001-1, 2001-1 I. R. B. 1, 47, the private letter ruling dated March 22, 1995 (TR-31-2565-94) (PLR 9524023) is revoked.

According to the facts submitted, Decedent, a resident of State, executed his Last Will and Testament (Will) on Date 2. Decedent amended his Will by codicil dated Date 3. Decedent died on Date 1.

Under Paragraph III of the Will, Decedent created Trust for the benefit of Decedent's spouse (Spouse), children, and lineal descendants. Son has served as the trustee of Trust since Trust was established and continues to serve in that capacity.

Under the terms of Paragraph III as amended by the codicil, the dividends and income of Trust, after the death of Spouse (who died in Year 1), are to be paid in equal shares to or for the use of Decedent's son (Son) and seven daughters (Q, R, S, T, U, V, and W). In the event of the death of any of the eight children, "the lineal descendants of the deceased child shall receive the share and interest of such deceased child in any payments made after such death, per stirpes and not per capita."

Paragraph III(C) provides that upon the death of Decedent's last surviving child, Trust is to terminate, whereupon its principal is to be distributed to Decedent's then living lineal descendants, per stirpes.

Paragraph III(E) of the Will provides as follows:

In the event of the death of my son, [Son], before or after my death, or in the event of the resignation, refusal or inability of my said son, [Son], to act as Trustee, I direct my daughters hereinabove named in this Will who survive me and who survive the said [Son], shall be substituted as Trustees under this trust in the place and stead of the said [Son]; and, thereupon, they, the said daughters so surviving, and the survivors of them, in the event the deaths of any of them occur after such substitution, shall have all the authority and rights and obligations as Trustees in this trust which are herein provided for and conferred upon the said [Son]. The exercise of the authorities and rights of the substituted Trustees shall be by joint action of a majority in number of those of my said daughters who are surviving and who have accepted in writing, this appointment as such Trustees, at the time for such action.

Paragraph V(D) of Decedent's Will states:

If necessary at any time for the care, support and/or maintenance in comfort of any beneficiary of any trust established by this will, and upon the showing of such need to the satisfaction of the Trustees, and in their discretion, a part or all of the expected interest of such beneficiary under such trust may be anticipated and paid, from time to time, to or for the use of such beneficiary, and the action of the Trustees in making such disbursement shall be final and shall bind all beneficiaries and all persons interested in such trust.

Paragraph V(E) of the Will states:

[E]xpenses and disbursements in excess of the net income may be made at any time from the trust estate of any trust established by this will, or from any individual share therein, if, in the judgment and discretion of the Trustees, such encroachments are incident to the conservative use of said estate for the best accomplishment of the purposes of such trust; and such expenditures may be so made even if thereby the share or interest of such individual in such trust estate is wholly exhausted.

Under Paragraph V(H), the trustees may make any division or distribution in kind, partly in kind and partly in money, or wholly in money.

Trust is governed by the law of State. Under State Statute a trustee is allowed to partition a trust without court approval. The trustee proposes to partition Trust pursuant to State Statute.

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

In 1982, Agreement 1 was approved by the Orphan's Court of County. The agreement provided that in consideration of the payment of a settlement sum, the adopted daughter of R and the daughter's issue, natural or adopted, were not to be parties-in-interest in Trust and had no interest in Trust.

In 1983, Agreement 2 was approved by the Orphan's Court of County. The agreement recognized the right of W's adopted son, and the son's issue to participate in the income and principal of Trust on a mathematically reduced fractional basis.

In 1995, the then living adult beneficiaries of Trust entered into Agreement 3 that was approved by the Orphan's Court of County in the same year. Agreement 3 provides that, at such time as Son no longer serves as trustee, the Trust's assets are to be divided pro rata among eight separate trusts (or fewer depending upon subsequently developing circumstances as to surviving family members), one for each of the Decedent's living children and their lineal descendants and one for the benefit of the lineal descendants of each of Decedent's deceased children (the successor trusts). The assets are to be distributed in kind among the successor trusts in the exact fractional amounts identical to the respective income interests under Trust for each of

Decedent's living children and for the lineal descendants of each of Decedent's deceased children.

No new trust instruments are to be created for the successor trusts; rather, such trusts will be governed by the terms and conditions of Trust with respect to income and principal distributions, termination, and distribution of assets. Thus, as provided under the terms of Trust, the income of the successor trusts will be payable to the current income beneficiaries of the Trust (or if deceased, to their lineal descendants, per stirpes) and the trusts will not terminate, until the death of the last surviving child of the Decedent.

The Agreement 3 names successor trustees for the eight successor trusts that will be different from those designated under Trust. However, the trustees of the successor trusts are subject to the same fiduciary duty and the same terms and conditions as those that are applicable to a trustee of Trust.

In addition, pursuant to an amendment to Agreement 3, at any time that an income beneficiary is serving as a successor trustee of a particular successor trust, there is to be a second successor trustee concurrently serving in the same successor trust. Such additional trustee is to be appointed by unanimous vote of all of the adult members of that particular family line who approved Agreement 3. The successor trustee designations that are made in Agreement 3 may be revoked at any time, whether before or after the appointment of the successor trustees become effective, by the unanimous vote of all of the adult members of that particular family line who also approved the Agreement 3, provided such persons unanimously designate the new successor trustee or trustees.

Under Agreement 3, upon termination of the successor trusts, the principal of each successor trust is to be distributed per stirpes to the lineal descendants of the child of the Decedent for whose benefit the successor trust was established or, in the case of R, who has no lineal descendants in accordance with Agreement 2. No adjustment is to be made for any difference in investment performance among the successor trusts and the successor trusts are not to merge or to be otherwise combined for purposes of distribution upon the termination of the successor trusts.

As discussed above, Son who is presently 92 years of age, continues to serve as trustee of Trust. Therefore, the terms of Agreement 3 never took effect. Two of Son's seven sisters, R and T, are living.

Some of the lineal descendants of Decedent's children have made requests to Son, as trustee, for a further division of their respective trusts, into separate successor trusts for each of the separate family lines of the children of Decedent. To accommodate these requests, the trustee and all the adult beneficiaries of Trust intend to enter into Agreement 4, contingent upon favorable rulings from the Internal Revenue Service. Agreement 4 will incorporate all of the terms and conditions of the previous agreements.

In addition, Agreement 4 will provide that when Son ceases to act as trustee of Trust, instead of Trust being divided into eight successor trusts as provided for under Agreement 3, the successor trusts for the Q, S, U, V, and T family lines will each be further divided. Agreement 4 provides for the division of Trust into separate and equal successor trusts for each separate family group emanating from Q, S, U, V, and T, resulting in fourteen successor trusts. With respect to the Q, S, U, and V family lines, two separate successor trusts will be created, and for the T family line, three separate successor trusts will be created. These divisions will be made pursuant to State Statute.

This further division of Trust will be subject to: (a) all of the terms of Trust, including those with respect to principal distributions, termination and related distributions of assets; (b) the requirement that all of the adult members of the Q, S, U, V, and T family lines must approve the removal of a trustee and the designation of a successor trustee with respect to each respective family line's successor trusts.

Any principal distributions to any beneficiary of a successor trust is to be allocated and paid from the successor trusts in the same manner as such distributions would have been allocated and paid as if the successor trusts had continued as one Trust. In addition, the written consent of all the then acting trustees of each successor trust will be required prior to the making of any principal distribution from any successor trust unless a final unappealable order by the Orphan's Court of County is obtained that such principal distribution is properly a charge solely against the separate successor trust for the benefit of the recipient of such distribution, in which event, the only consent required would be the trustees of such successor trust.

Except for the successor trust established for Son during his lifetime, all successor trusts created under Agreement 4 will have at all times a bank or trust company that is qualified to do business in State serving as trustee or co-trustee.

Under the terms of Agreement 4, the current designation of one or more of the successor trustees of any of the proposed successor trusts contained in Agreement 4 can be revoked at any time, whether before the successor trustee is acting or while the trustee is acting, and shall become effective by unanimous vote of all adult members of that particular family line who approved Agreement 4, provided such persons unanimously designate a new successor trustee or trustees. Except in the case of R who has no lineal descendants, this power to remove and replace a successor cotrustee, may only be exercised by unanimous vote of all of the adult members of a particular family line. Although R will reserve the right to remove and replace a trustee, the trustee of R's successor trust must always be a bank or a trust company.

Upon the death of the survivor of Son, R and T, (whereupon Trust shall terminate) the remaining assets held by each successor trust established are to be distributed per stirpes to the lineal descendants of Decedent living at that time of that lineal descendant line or branch, for whose benefit each successor trust was established. No adjustment is to be made for any difference in investment performance

between the successor trusts, and the successor trusts will not merge or be combined for purposes of distribution at the death of the survivor of Son, R, and T.

If there are no living lineal descendants within a branch of a lineal descendant's line for whose benefit a successor trust is established, the principal of that trust is to be distributed per stirpes to the living lineal descendants of the child of Decedent to which such lineal descendant line relates. R does not have any lineal descendants, therefore, upon her death, her trust shall be distributed, as referred to above, among the remaining trusts in accordance with Agreement 2.

The following rulings are requested by Son and the income beneficiaries of the Trust:

1. The proposed transaction will not cause the interest of any income beneficiary (Son, R, T, and the lineal descendants of Son, Q, S, T, U, V, and W) of the Trust or any successor trust, including any beneficiary serving as trustee, to be includible in such beneficiary's gross estate under § 2033.

2. The proposed transaction will not cause the interest of an income beneficiary of the Trust or any successor trust, including any such beneficiary who serves as trustee, to be includible in such beneficiary's gross estate under §§ 2036 through 2038.

3. The proposed partition of Trust will not cause the Trust or any successor trust, or any powers created under such trusts, to be treated as being created after October 21, 1942, for purposes of §§ 2041 and 2514.

4. The proposed partition of Trust will not cause an income beneficiary of the Trust or any successor trust, including a beneficiary serving as trustee, to have a general power of appointment created after October 21, 1942, for purposes of §§ 2041 and 2514.

5. The proposed partition of Trust into 14 successor trusts will not cause the trustee or a beneficiary, including a beneficiary who revokes the designation of a successor trustee and/or appoints a successor trustee, to be treated as having exercised a general power of appointment created on or before October 21, 1942 for purposes of §§ 2041 and 2514;

6. Under the proposed partition of Trust, the power of an income beneficiary who is also a successor co-trustee to distribute principal will not constitute a general power of appointment under §§ 2041 and 2514.

7. The right of the adult members of a particular family line having more than one adult member, by unanimous vote, to revoke the designation of a successor trustee or trustees and to designate a new successor trustee or trustees, shall not cause any such members to have a general power of appointment under §§ 2041 and 2514.

8. The right of an adult member of a particular family line having only one adult member to revoke the designation of a successor trustee or trustees and to designate a new successor trustee or trustees shall not cause such member to have a general power of appointment under §§ 2041 and 2514.

9. The proposed transaction will not cause an income beneficiary of the Trust or any successor trust, including any beneficiary serving as trustee, to have made a taxable gift for purposes of chapter 12 of the Code.

10. The Trust and any successor trust will be treated as a trust which was irrevocable on September 25, 1985, for purposes of § 1433(b)(2)(A) of the Tax Reform Act of 1986 and section 26.2601-1(b)(1)(I) of the Generation-Skipping Transfer (GST) Tax Regulations, which remains exempt from the generation-skipping transfer tax, and no constructive or actual addition to such trusts will result from the proposed transaction under section 26.2601-1(b)(1)(iv) or (v) of the GST regulations.

11. The proposed transaction will not constitute a GST and will not be subject to the GST provisions of § 2601.

12. The proposed transaction will not cause the Trust, any successor trusts, including any income beneficiary of such trusts, including a beneficiary serving as trustee, to recognize any gain or loss from the sale or other disposition of property under §§ 61 or 1001.

13. Pursuant to § 1015, the basis of each successor trust in each asset received from the Trust will be the same as the Trust's basis in each asset.

14. Pursuant to § 1223(2), the holding period of each successor trust in each asset received from the Trust will include the Trust's holding period for each such asset.

15. The successor trusts will be treated as separate taxpayers under § 643(b).

Ruling 1. Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

In this case, Trust was created under Decedent's will on Date 2. Son, R, T, and the lineal descendants of the deceased children of Decedent have only the right to income and distributions of principal under the standard provided in Paragraph V(D) and V(E) of the trust. After the proposed division of Trust into 14 separate trusts the same beneficiaries will have the same rights with respect to the particular trust that is partitioned for their benefit. The beneficiaries of each of the successor trusts have an interest in the income and principal of Trust or the successor trusts after the partition during the lifetimes of Son, R and T. Upon the death of the last to die of Son, R, and T,

the successor trusts will terminate and the principal of each trust will be distributed to the living lineal descendants of the Decedent, per stirpes.

Accordingly, we conclude that the proposed division of the Trust into successor trusts will not cause the interest of any beneficiary of the Trust or any successor trust to be includible in such beneficiary's gross estate under § 2033. However, any property distributed to a beneficiary of a successor trust from such trust would be includible in the beneficiary's gross estate if the property was still held by the beneficiary at the time of the beneficiary's death.

Ruling 2. Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2037(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death.

In order for §§ 2036 through 2038 to apply, the decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. In the present case, the beneficiaries of Trust or any successor trust, after the proposed division of Trust into fourteen successor trusts, will each have the right to the income from the property of his or her respective successor trust, and the right to discretionary distributions of principal, the same interest that each beneficiary had as a beneficiary under Trust.

The proposed division of Trust into fourteen successor trusts will not constitute a transfer by a beneficiary of Trust or of a successor trust, within the meaning of §§ 2036 through 2038. Since the application of §§ 2036-2038 requires a transfer by the decedent in order for those sections to be operative, we conclude that the proposed transaction will not cause the interest of any income beneficiary of Trust or any successor trust, including any income beneficiary serving as trustee, to be includible in the gross estate of any income beneficiary of Trust or any income beneficiary of a successor trust under §§ 2036 through 2038.

Rulings 3 - 8. 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 by will, or by a disposition which is of such a 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. The section further provides that the failure to exercise such a power or the complete release of such a power will not be deemed an exercise thereof.

Section 2041(a)(2) provides for the inclusion in the gross estate of any property to which the decedent possesses, at the time of his death, a general power of appointment created after October 21, 1942. The section further includes in the decedent's gross estate any property with respect to which the decedent has at any time exercised or released a general power of appointment created after October 21, 1942, by a disposition which is of such a 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.

Under § 20.2041-1(e) of the Estate Tax Regulations, a power of appointment created by will is, in general, considered created on the date of the testator's death.

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

Section 2041(b)(1)(C) provides that in the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person, having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent-- such power shall not be deemed a general power of appointment. A power is deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

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.

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing the power.

Under § 2041(b)(3) and § 2514(f), a power of appointment created by will executed on or before October 21, 1942, is considered to be a power created on or before such date if the person executing the will dies before July 1, 1949, without having republished such a will, by codicil or otherwise, after October 21, 1942.

A power of appointment created on or before October 21, 1942, will not lose its status as a pre-October 22, 1942 power because after October 22, 1942, there is a change in the identity of the persons having the power to exercise it. Section 20.2041-1(e), Example 2, provides:

C created a revocable trust before October 22, 1942, naming T as trustee and providing for payment of income to D for life with remainder to E. T was given the power to pay corpus to D and the power to appoint a successor trustee. If T resigns after October 21, 1942, and appoints D as successor trustee, D is considered to have a power of appointment created before October 22, 1942.

Under § 2041(b)(1)(B) and § 2514(c)(2), a power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

Section 20.2041-1(a) provides that a decedent's gross estate includes under § 2041 the value of property in respect of which the decedent possessed, exercised or released certain powers of appointment. Section 20.2041-1(a) and (b) contain rules of general application, that is, the rules are applicable to powers of appointment created on or before October 21, 1942, and powers of appointment created after October 21, 1942.

Under § 20.2041-1(b)(1) a power in a donee to remove and 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 an 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 unrestricted power of removal.

Rev. Rul 95-58, 1995-2 C.B. 191, holds that a decedent who reserves the right to remove and replace a trustee, who has broad discretionary powers of distribution, will not be considered as having the discretionary powers of the trustee unless the decedent can appoint a trustee that is related or subordinate to the decedent under § 672(c).

Section 20.2041-2(e) provides that if a general power of appointment created on or before October 21, 1942, is partially released so that it is not thereafter a general power of appointment, a subsequent exercise of the partially released power is not an exercise of a general power of appointment if the partial release occurs before November 1, 1951.

In the present case, Decedent executed his Will on Date 2 and died on Date 1. Any power of appointment that was created in Decedent's Will was created in a will executed on or before October 21, 1942, and is considered to be a power created before such date because Decedent died before July 1, 1949, without having republished his will by codicil or other document dated after October 21, 1942.

The trustee intends to divide Trust into 14 successor trusts pursuant to the terms of Agreement 4 which incorporates the previous agreements. Under both the terms of Trust and the terms of the successor trusts, a beneficiary is entitled, during his or her life, to income and discretionary distributions of principal from the Trust or from a successor trust. The division of Trust into fourteen successor trusts will not result in any change in any power created under the Trust or any change in the beneficial interests, rights or expectancies of any beneficiary provided for under the terms of the Trust.

[3] Accordingly, we conclude that the proposed division of Trust, into fourteen successor trusts will not cause Trust, the successor trusts, and any powers created under Trust to be deemed to be created after October 21, 1942.

Under the terms of Agreement 4, after the death or resignation of Son, an income beneficiary may serve as a cotrustee but may not serve as the sole trustee. Although the successor trustees will be appointed after October 21, 1942, they will be considered to have a power of appointment created before October 22, 1942.

The current designation of one or more of the successor trustees of any of the proposed successor trusts contained in Agreement 4 can be revoked at any time, by unanimous vote of all adult members of a particular family line. However, such persons must unanimously designate a new successor trustee or trustees.

In the case of R who has no lineal descendants, the power to remove and replace a successor cotrustee, is exercisable by R without the requirement of unanimous consent of family members. R, however, will not serve as a cotrustee. In addition, except for the trust created for Son during Son's lifetime, all successor trusts, including R's trust, must have a bank or trust company that is qualified to do business in State, serving as trustee or co-trustee.

As a cotrustee, an income beneficiary can participate in the decision to direct that principal of the successor trust be distributed to himself or herself. Generally, any distribution of principal from a successor trust, including the successor trust for Son and Son's lineal descendants, may be made only with the consent of all the trustees of the 14 successor trusts. However, if there is a final unappealable order by the Orphan's

Court of County that a principal distribution is properly a charge against a separate successor trust, only the consent of the trustees of the respective successor trust would be required.

Under Trust, Son has a pre-October 21, 1942 general power of appointment. Pursuant to the terms of Agreement 4, Son's general power of appointment will be partially released by virtue of the fact that the power will be exercisable only with the consent of the remaining trustees of each successor trust. The partial release of Son's original general power of appointment so that it is no longer a general power of appointment, will not cause Son's power under Agreement 4 to be treated as a post October 21, 1942 power of appointment. Accordingly, Son's power to distribute principal, that will be exercisable only with the consent of the remaining trustees of each successor trust, will not be a general power of appointment under § 2041 or § 2514 unless Son exercises the power. See § 20.2041-2(e).

We conclude, therefore that:

[4] the proposed division of Trust into successor trusts will not cause the beneficiary of Trust or any successor trust, including an income beneficiary of Trust who is serving as trustee, to be treated as having a general power of appointment created after October 21, 1942 for purposes of §§ 2041 or 2514;

[5] the proposed division of Trust into 14 successor trusts, will not cause the trustee or a beneficiary, including a beneficiary who revokes the designation of a successor trustee and/or appoints a successor trustee, to be treated as having exercised a general power of appointment created on or before October 21, 1942 for purposes of §§ 2041 and 2514;

[6] under the proposed transaction, with respect to the beneficiaries, who serve as a cotrustee of a successor trust, the power of appointment created before October 21, 1942, possessed by a beneficiary/cotrustee to distribute principal of a successor trust, will not be a general power of appointment. In Son's case, Son's power as a trustee to distribute principal of his successor trust will be a general power of appointment only in the case of Son's exercise of the power;

[7] the right of a particular family line having more than one adult member, by unanimous vote, to revoke the designation of a successor trustee or trustees and to designate a new successor trustee or trustees, as well as the actual revocation and designation, will not cause the beneficiaries to have a general power of appointment within the meaning of §§ 2041 and 2514. See § 2041(b)(1)(B).

In the case of R who has no lineal descendants, the power to remove and replace a successor cotrustee, is exercisable by R alone. Upon partition, R will not serve as trustee of her successor trust. Instead, R's trust will have only one trustee and that trustee will be a corporate trustee in accordance with Agreement 4, which requires all successor trusts created under Agreement 4 to have at all times a bank or trust company which is qualified to do business in State, serving as trustee or co-trustee.

Under Rev. Rul 95-58, supra, a decedent who reserves the right to remove and replace a trustee, who has broad discretionary powers of distribution, will not be considered as having the discretionary powers of the trustee unless the decedent can appoint a trustee that is related or subordinate to the decedent under § 672(c). Although R will reserve the right to remove and replace a trustee, at least the succeeding trustee must always be a trustee that is not related or subordinate to R. In addition, any principal distribution to R may be made only with the consent of all the trustees of the 14 successor trusts unless, as discussed above, there is an unappealable order requiring that the principal distribution be charged against R's separate trust. In that case, only the bank or trust company serving as trustee would be required to consent.

We conclude, therefore, that

[8] the right of R, who is the only member of her family line, to revoke the designation of a successor trustee and to designate a new successor trustee, will not cause R to have a general power of appointment created before or after October 21, 1942, under §§ 2041 and 2514.

Ruling 9. Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Under § 2503(a) the term "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided under § 2522 and other sections. Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Upon division of the Trust into separate successor trusts, each beneficiary will have the same right to income and to discretionary distributions of principal as the beneficiary had under the Trust. Because the beneficial interests, rights, and expectancies of the beneficiaries of the Trust are substantially the same both before and after the proposed transaction, no transfer of property will be deemed to occur as a result of the proposed division. Accordingly, we conclude that the proposed transaction will not cause any beneficiary of the Trust or any successor trust, including any beneficiary serving as trustee, to have made a taxable gift for purposes of the gift tax.

Ruling 10 - 11. Section 2601 imposes a tax on every generation-skipping transfer. Section 1431 of the Tax Reform Act of 1986, P.L. 99-514, 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(a) of the Generation-Skipping Transfer Tax (GSTT) Regulations provide that the tax will apply to any generation-skipping transfer made after October 22, 1986.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) provide that the generation-skipping transfer tax will not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of principal added to the trust after September 25, 1985 (or out of income attributable to principal so added).

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 GSTT under §§ 26.2601-1(b)(1), (2), or (3) (an exempt trust) will not cause the trust to lose its exempt status. Section 26.2601-1(b)(4)(D) provides that a modification of the governing instrument of an exempt trust 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.

In the present case, the Trust was created and became irrevocable upon the Decedent's death on Date 1, and there have been no additions made to Trust after September 25, 1985. Accordingly, Trust is exempt from GSTT under § 26.2601-1(b)(1).

Under the facts as presented, the division of the Trust into successor trusts pursuant to Agreement 4 will 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.

Accordingly, we conclude that Trust and the successor trusts will be treated as trusts which were irrevocable on September 25, 1985, for purposes of § 1433(b)(2)(A) of the Tax Reform Act of 1986 and which remain exempt from the generation-skipping transfer tax. No constructive or actual addition to such trusts will result from the proposed transaction. Transfers to the successor trusts pursuant to the proposed transaction will not be generation-skipping transfers and will not be subject to tax under § 2601.

Rulings 12. Section 61(a)(3) 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 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 such section for determining loss over the amount realized.

Section 1001(b) provides 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. Section 1001(c) provides that, except as otherwise provided in subtitle A, the entire amount of the gain or loss determined under §1001 on the sale or exchange of property shall be recognized.

The conversion, for the purpose of eliminating a survivorship feature, of a joint tenancy into a tenancy in common is a nontaxable transaction. Likewise, the severance

of a joint tenancy under a partition action pursuant to state law is a nontaxable transaction. See Rev. Rul. 56-437, 1956-2 C.B. 507. Cf. Rev. Rul. 69-486, 1969-2 C. B. 159 (non-pro rata, in-kind distribution from trust pursuant to agreement of beneficiaries is an exchange between the beneficiaries because the trustee was not authorized by the trust instrument or local law to make a non-pro rata distribution).

The Trust will be partitioned in accordance with the state law to which it is subject. Under the four Agreements, entered into by the beneficiaries and the trustee of the Trust, the Trust will be partitioned into 14 successor trusts. The Trust will distribute its assets to each successor trust on an in-kind, pro-rata basis to reflect the exact ownership interest of each beneficiary of the Trust.

The terms of the Trust, as modified by the four Agreements, will apply, in like manner, to the successor trusts. Notably, in accordance with Paragraph V(E) , expenditures and disbursements in excess of net income may be made from any one or all of the successor trusts or from any individual share therein upon the written consent of the combined total number of all the then acting trustees of the 14 successor trusts in order to best accomplish the purposes of any successor trust.

Accordingly, the partition of the Trust into 14 successor trusts will not be a sale, exchange, or other disposition of property of the Trust and will not give rise to a realization of income to the Trust under §§ 61 or 1001.

Ruling 13. Section 1015(b) provides that, if property is acquired by a transfer in trust (other than a transfer in trust by 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 the 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 a 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 in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer is made. In addition, the principles in § 1.1015-1(b) concerning the uniform basis are applicable in determining the basis of property where more than one person acquires an interest in property by transfer in trust. Section 1.1015-1(b) provides that property acquired by gift has a single or uniform basis although more than one person may acquire an interest in the property. The uniform basis of the property remains fixed subject to proper adjustment for items under §§ 1016 and 1017.

In this case, § 1001 will not apply to the proposed division of Trust. Accordingly, we conclude that, the basis of the assets in the fourteen successor trusts will be the same as the basis of the assets currently held in Trust.

Ruling 14. Section 1223(2) provides, in part, that in determining the period for which the 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 subtitle A 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 the taxpayer's hands as it would have in

the hands of such other person. If a successor trust's basis in an asset transferred to it by the Trust equals the Trust's basis in that asset at the time of transfer, then under §1223(2) the successor trust obtains the Trust's holding period in that asset.

As noted above, the basis of the assets held by the 14 successor trusts will be the same as the assets currently held by Trust. Accordingly, under § 1223(2), the holding period of the assets in each of the successor trusts will include the holding period of the same assets in Trust.

Ruling 15. 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 beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of the tax, imposed by chapter 1. For purposes of the preceding sentence, a husband and wife shall be treated as one person.

While the successor trusts will have the same grantor, they will have different primary beneficiaries. Therefore, based on the facts and representations submitted, we conclude that the successor trusts will be treated as separate trusts for federal income tax purposes under § 643(f).

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Except as specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions of the Code or under any other provisions of the Code.

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

Sincerely yours,  
JAMES F. HOGAN  
Assistant to the Branch Chief  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy of letter for section 6110 purposes