

Internal Revenue Service

Department of the Treasury

Number: **200410015**
Release Date: 03/05/2004
Index Number: 2041.00-00, 2601.03-01

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-162062-02
Date:

October 10, 2003

Legend

- Grantor 1 =
- Grantor 2 =
- Child 1 =
- Child 2 =
- Child 3 =
- Grandchild 1 =
- Grandchild 2 =
- Grandchild 3 =
- Grandchild 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Child 3's Spouse =
- Date 4 =
- Series I Trusts =
- Date 5 =
- Trustee 1 =
- Trustee 2 =

PLR-162062-02

Trust IA-1 =

Trust IA-2 =

Trust IA-3 =

Trust IA-4 =

Trust IB-1 =

Trust IB-2 =

Trust IC-1 =

Series II Trusts =

 Date 6 =

x =

 Foundation =

 State 2 =

Grantor 1's Wife =

 Bank =

Trust IIA =

Trust IIB =

Series III Trusts =

PLR-162062-02

Date 7 =
Trust IIIA-1 =

Trust IIIA-2 =

Trust IIIA-3 =

Trust IIIA-4 =

Trust IIIB-1 =

Trust IIIB-2 =

Trust IIIC-1 =

Date 8 =
Family X =

Family Y =

Trust Company =
State 1 =
Date 9 =
Patriarch X =
Patriarch Y =
Trust A =
Trust B =

PLR-162062-02

Trust C =
Trust D =
Trust E =
Trust F =
Date 10 =
Probate Court =
Date 11 =
Measuring Life 1 =
Measuring Life 2 =
Measuring Life 3 =
Child 1's Spouse =
Person 1 =
Trust Y =

Trust Z =

Date 12 =
Trustee 3 =

Dear :

This letter responds to your letter, dated April 17, 2003, and prior correspondence requesting rulings under §§ 2041 and 2601 of the Internal Revenue Code.

Facts

Grantor 1 and Grantor 2 (collectively referred to as “the grantors”) created one series of trusts together. In addition, Grantor 1 and Grantor 2 each created a separate series of trusts. Each series of trusts was created to benefit Child 1, Child 2, Child 3, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4. Grantor 1 died on Date 1. Grantor 2 died on Date 2. Child 1 and Child 2 are currently more than fifty years old. Child 3 died on Date 3 survived by Child 3's Spouse. Child 3's Spouse died on Date 4. Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 are at least thirty years old.

All the trusts in each series were created and were irrevocable prior to September 25, 1985.

Series I Trusts

Grantor 1 and Grantor 2 created the Series I Trusts on Date 5. The Series I Trust Agreement designates Trustee 1 as the family trustee and Trustee 2 as the independent trustee. The Series I Trusts are irrevocable.

Section 1.1 of the Series I Trust Agreement provides that the trustees, without the necessity of physical segregation, shall divide the trust property into three equal parts, the parts to be designated by the letters "A", "B", and "C", respectively, one part for each of the grantors' three children: Child 1, Child 2, and Child 3. Part "A" for Child 1 shall be further divided into four equal parts, designated as parts "A-1", "A-2", "A-3", and "A-4", respectively, one such part for Child 1, and one for each of his three children: Grandchild 1, Grandchild 2, and Grandchild 3. Part "B" for Child 2 shall be further divided into two equal parts, designated as parts "B-1" and "B-2", respectively, one part for Child 2 and the other part for her son, Grandchild 4. Part "C" shall remain as one part, designated as part "C-1" for Child 3. Each of the seven parts shall constitute the corpus of a separate and distinct trust for the primary benefit of the person whose interest the part represents, and each such person shall be considered as the initial "beneficiary" of his or her respective separate trust.

Section 1.2 of the Series I Trust Agreement provides that each and every time that a child not having a trust shall be born to or adopted by any of the three children of grantors who shall not then already have attained more than fifty years of age, a new separate and distinct trust for the primary benefit of the new grandchild shall automatically, and without further action of any sort on the part of anyone, come into existence hereunder, effective as of one month after the date of the birth or adoption, provided the grandchild is then living. Each time a new trust comes into existence, a fractional share of each asset then contained in each and every separate trust for the primary benefit of the new grandchild's parent and brothers and sisters, and/or their families, that was in existence immediately prior to the effective date shall automatically, without any formal action by the trustees, be considered, for all purposes, as transferred to and constituting the corpus of the newly existing separate trust.

Article II of the Series I Trust Agreement provides the dispositive provisions for each separate trust under the Series I Trust Agreement. Section 2.1(a) provides that with respect to Child 1, Child 2, and Child 3, during the remainder of the lifetime of each child, any part or even all of the then total combined net income and/or corpus of all of the separate trusts having the same letter designation (i.e., "A", "B" or "C") as the letter designation of the separate trust with respect to which the child is the primary beneficiary, so far as possible in equal amounts from each, may, at any time or times, in the sole discretion of the independent trustee(s) of the trusts, be distributed to or for the benefit of the child. Section 2.1(b) provides that during the existence of the separate trusts, any part or even all of the then net income and/or corpus of the trust, but exclusive of any subaccount provided for in Section 2.4, may, at any time or times,

in the sole discretion of the independent trustee of the trust, be distributed to or for the benefit of the beneficiary, or any one or more of the then beneficiaries, of such separate trust and/or to or for the benefit of any one or more of those of the lineal descendants of the beneficiary or beneficiaries who are also lineal descendants of the grantors and who are then living even though not now living, including those whose parent or parents are then living. Where there is more than one beneficiary of a separate trust, the distributions from such trust need not be equal nor proportionate nor need they bear any relationship whatsoever to the amount of the then interests of the respective beneficiaries in the net assets of such trust as computed for the purposes of Sections 2.4, 2.5(b), 5.1, and 6.1, and in the discretion of the independent trustee, the total distributions to one beneficiary may properly exceed to any extent the amount of his or her apparent interest in the trust even though this will have the effect of depleting the amount of the other beneficiaries' apparent interests in the trust.

Section 2.2 of the Series I Trust Agreement provides that if, at the end of any federal income tax accounting year of any separate trust, any of its net income for the year remains undistributed, the undistributed net income shall be added to and become a part of the trust's corpus.

Section 2.3(a) of the Series I Trust Agreement provides that with respect to each of the grantors' three children, from time to time after the death of both grantors during the remainder of the lifetime of each child, by written instrument executed by him or her, with all the formalities of a deed, approved in writing by the then trustee(s) of the affected trust or trusts, and delivered to the independent trustee of the affected trust(s), effective upon the delivery unless the instrument specifically postpones the effective date to a later time or to his or her death (rescindable by him or her in a similar manner any time prior to the stated effective date), the child shall have the right and power subject to the trustees' discretionary approval, to appoint any part or all of the total combined net assets contained on the effective date in any one or more of the separate trusts having the same letter designation (i.e., "A", "B" or "C") as the letter designation of the separate trust with respect to which the child is the primary beneficiary, in amounts from each as he or she shall specify, to or among or for the benefit of any person(s) (whether or not then in being), in any amounts or proportions, provided, however, that the power shall not be exercisable to any extent for the benefit of the child, his or her estate, his or her creditors, or the creditors of his or her estate.

Section 2.3(b) of the Series I Trust Agreement provides that with respect to each beneficiary of any trust who shall have attained at least thirty years of age and who is a lineal descendant of the grantors, from time to time after the death of both of the grantors during the remainder of the lifetime of the beneficiary, by written instrument executed by him or her approved in writing by the then trustee(s) of the affected trust(s), and delivered to the independent trustee of the affected trust(s), effective upon the delivery unless the instrument specifically postpones the effective date to a later time or to his or her death (rescindable by him or her in similar manner any time prior to the effective date), the beneficiary shall have the right and power, subject to the trustees' discretionary approval, to appoint any part or all of the total net assets contained on the effective date in any separate trust(s) with respect to which he or she is then the sole

PLR-162062-02

beneficiary (as that term is used herein), to or among or for the benefit of any person(s) (whether or not then in being), in any amounts or proportions, provided, however, that the power shall not be exercisable to any extent for the benefit of its holder, his or her estate, his or her creditors or the creditors of his or her estate.

Section 2.5(a) of the Series I Trust Agreement provides that upon the death of a beneficiary of a separate trust who is a lineal descendant of the grantors, the individual (or individuals in the proportions specified), other than the estate of the beneficiary and other than the creditors of the beneficiary or of his or her estate, as the beneficiary may designate by his or her Last Will and Testament, shall become a beneficiary (or beneficiaries) of the separate trust the extent of the deceased beneficiary's then interest in the undivided net assets of the trust.

Section 2.5(b) of the Series I Trust Agreement provides that in the event no such designation of a successor beneficiary can be or has been made, then upon the death of a beneficiary of a separate trust hereunder, the surviving spouse, if any, of the deceased beneficiary, if they were lawfully married and not separated at the date of the death and if the deceased beneficiary was a lineal descendant of the grantors, shall become a beneficiary, and until the surviving spouse remarries, will remain a beneficiary, of the separate trust to the extent of one-half of the deceased beneficiary's then interest in the undivided net assets of the trust. The beneficiary or beneficiaries of the balance of the deceased beneficiary's then interest in the undivided net assets of the trust (i.e., either one-half or all of the interests, as the case may be depending on whether or not there is a surviving spouse of the deceased beneficiary who has not then remarried) shall be: (i) those of the lineal descendants of the deceased beneficiary who are also lineal descendants of the grantors and who are then living, per stirpes, the then living surviving spouse as defined in this section, if any, of a then deceased lineal descendant of the deceased beneficiary to become a beneficiary to the same extent his or her deceased spouse would have were she or he then living; or otherwise (ii) those of the lineal descendants of the child of the grantors whose separate trust bears or bore the same letter designation (i.e. "A", "B" or "C") as the letter designation of the separate trust (having the deceased beneficiary whose interest is herein being allocated), who are then living, per stirpes, the then surviving spouse as defined in this section, if any, of a then deceased lineal descendant of the child of the grantors to become a beneficiary to the same extent his or her deceased spouse would have were she or he then living; or otherwise (iii) the first child next born to or adopted by the child of the grantors referred to in sub-paragraph (ii) of this section, provided the child of the grantors is then living and is less than fifty-one years of age; or otherwise (iv) those of the lineal descendants of the grantors who are then living, per stirpes, the then living surviving spouse as defined in this section, if any, of a then deceased lineal descendant of grantors to become a beneficiary to the same extent his or her deceased spouse would have were she or he then living; or otherwise (v) the person(s) who are already beneficiaries of any trust under the provisions of Article II of the trust agreement, in equal shares if there be more than one.

Section 6.1(b) of the Series I Trust Agreement provides that all other provisions to the contrary notwithstanding, each and every trust at any time coming into existence

PLR-162062-02

hereunder, unless earlier terminated, shall in any and all events terminate on the day prior to the expiration of twenty-one years after the death of the last survivor of those now living persons whose names appear in the instrument and those of their respective lineal descendants who are living on the date of the instrument. Upon termination of a trust under this section, its independent trustee shall pay over all of the net assets then contained in the trust to the then beneficiary to whom distributions of the of the income of the trust might then be properly made (or if there be more than one beneficiary, then to the beneficiaries according to their then respective apparent proportionate interests in the trust as determined in the reasonable discretion of the trustee).

Section 8.1 of the Series I Trust Agreement provides, in part, that the grantors and Child 1, shall each, independently and concurrently, have the absolute right at any time or times, with or without cause, to remove any then acting family trustee of any trust hereunder, by causing written notice of removal setting forth the effective time and date thereof to be delivered personally or sent by registered mail to such trustee prior to the effective time. After the death or incapacity to act (certified to in writing by two licensed physicians) of all three of the persons (both grantors and Child 1), any family trustee of any trust may at any time or times be removed, with or without cause, by the person or group of persons (acting unanimously) then having the right under Section 8.3 to fill a vacancy in the office of family trustee for the trust, any such removal being by notice as provided in this section. Furthermore, any independent trustee of any trust may at any time or times be removed with or without cause, by the then acting family trustee (other than Child 1 or Grantor 2) of the trust. Any such removal must be by notice as provided in this section.

Section 8.2 of the Series I Trust Agreement provides that upon the death or incapacity to act of both Grantor 1 and Child 1, the then independent trustee of each trust hereunder, unless it is a bank or trust company, shall resign and Bank shall thereupon become the independent trustee in the place of the resigning trustee. In the event, under any other circumstances, of any vacancy at any time or times occurring in the office of independent trustee with respect to any trust hereunder, whether caused by resignation, removal, incapacity to act, death or otherwise, such vacancy in office shall be promptly filled by a bank or trust company that is located in some state in the United States, that has trust powers, and that has a capital and surplus in excess of \$10,000,000, or by an individual who is sui juris, who is experienced in business and finance or who is an attorney experienced in the trust and tax fields, and who is neither one of the grantors nor a beneficiary nor a permissible distributee nor related to either grantor or to any beneficiary or permissible distributee in any of the following classifications: spouse, ancestor, lineal descendant, brother or sister, nor an employee of either of the grantors or of any beneficiary or permissible distributee or of a corporation, firm or partnership in which either grantor or any beneficiary or permissible distributee is an executive or has stock or other holdings that are significant from the viewpoint of control. The selection and appointment of such successor independent trustee shall be made, in the following order of preference, (a) by Grantor 1 if he is then living and not incapacitated, (b) by Child 1 if he is then living and not incapacitated, (c) by Grantor 2 if she is then living and not incapacitated, (d) by the then acting family trustee of the trust, or if there is none, (e) by the majority vote of all of the then

PLR-162062-02

beneficiaries (as that term is used in Section 1.1 of the trust agreement) of the trust, each such beneficiary being entitled to one vote, such vote to be cast by written ballot signed by the person (or if the person is not then sui juris, by his or her parent, spouse or legally appointed guardian, in that order of preference), provided, however, that unless the successor independent trustee is selected by Grantor 1 or by Child 1 the successor independent trustee shall not be an individual but must be a bank or trust company.

Section 8.3 of the Series I Trust Agreement provides that in the event of any vacancy in the office of family trustee with respect to any trust hereunder, whether caused by resignation, removal, incapacity to act, death or otherwise, such vacancy may at any time be filled by an individual who is sui juris and has attained at least twenty-five years of age (including even the person making the appointment) selected and appointed, in the following order of preference, (a) by Grantor 1, while living and not incapacitated, (b) by Grantor 2, while living and not incapacitated, (c) by each of the grantors' children, respectively, while living and sui juris, but only with respect to any trust or trusts for the principal benefit of that child and his or her family, or (d) by the majority vote of all of the beneficiaries (as that term is used in Section 1.1 of the trust agreement) of the trust, each such beneficiary being entitled to one vote, such vote to be cast by written ballot signed by the person (or if the person is not then sui juris, by his or her parent, spouse or legally appointed guardian, in that order of preference). Should a person (or group) having priority in the order of preference in the selection of a successor to fill a vacancy in the office of family trustee with respect to a trust notify the then acting independent trustee of the trust that, until further notice, the office is to remain vacant, then, until the person (or group) actually able to make such an appointment having the highest priority actually appoints a successor to fill the vacancy, the office shall remain vacant and the independent trustee of the trust shall act alone as the sole trustee of the trust.

Section 8.4 of the Series I Trust Agreement provides that if, at any time(s) during the lifetime of Grantor 1 or while Child 1 is the family trustee of the affected trust, the independent and family trustee of any trust shall be unable to agree as to the exercise or non-exercise of any power or discretion that they have, other than any exercisable by the independent trustee alone, the wishes of the family trustee, if expressed in writing and delivered to the independent trustee, shall prevail, and in such case, the independent trustee shall do and perform all acts necessary and advisable to carry into effect the decision of the family trustee, and the independent trustee shall be, and hereby is, fully exonerated from any liability arising out of or with respect to the decision by the family trustee.

There are currently seven trusts being administered under this trust agreement. Trust IA-1, Trust IA-2, Trust IA-3, and Trust IA-4 are for the primary benefit of Child 1 and his family line. Trust IB-1 and Trust IB-2 are for the primary benefit of Child 2 and her family line. Trust IC-1 was initially for the primary benefit of Child 3 and her family line, but since the death of Child 3 and Child 3's Spouse, the trust has been administered for the benefit of Child 1 and Child 2 and each child's family line. Since

PLR-162062-02

neither Child 1 nor Child 2 is the sole beneficiary of Trust IC-1, no beneficiary holds a power of appointment over its assets.

Series II Trusts

Grantor 1 created the Series II Trusts on Date 6. The Series II Trust Agreement designates Trustee 1 as the family trustee and Grantor 1 as the independent trustee. The Series II Trust Agreement created a revocable trust that became irrevocable on Grantor 1's death on Date 1. Trustee 2 now serves as the independent trustee of the Series II Trusts.

Article II of the Series II Trust Agreement provides the dispositive provisions for the administration of the Series II Trusts after Grantor 1's death. Section 2.1 provides that after Grantor 1's death, \$x shall be distributed as a charitable distribution to Foundation, a State 2 trustee corporation. The remainder of the trust property, of whatever nature and wherever situated, shall be continued in trust as the corpus of the Non-Marital Trust, governed by Article IV of the Series II Trust Agreement.

Article IV, Section 4.1 of the Series II Trust Agreement provides that any and all trust properties at any time allocated to the Non-Marital Trust, including the net income thereon, shall be divided by the trustees, with reasonable promptness and without the necessity of physical segregation, into three equal shares, one each in the name of Child 1, Child 2, and Child 3. Each share shall thereafter be held as a separate and distinct trust bearing the name of the child whose share it represents.

Section 4.2 of the Series II Trust Agreement provides for the distribution of income and corpus during the existence of the separate trusts. Section 4.2(b) provides that during the existence of the separate trusts, any part or even all of the then net income and/or corpus of the trust may, at any time(s), in the sole discretion of the independent trustee of the trust, be distributed to or for the benefit of the child of Grantor 1 in whose name the trust stands, if then living, and/or to or for the benefit of any one or more of those of the lineal descendants of the child who are then living even though not now living, including those whose parent(s) are then living. When distributions are made to more than one person the amounts or proportions received by each need not necessarily be equal and shall be in the sole discretion of the independent trustee of the affected trust.

Section 4.5 of the Series II Trust Agreement provides that during the lifetime of each respective child of Grantor 1 in whose name a separate trust has been established, by written instrument executed by him or her, as the case may be, with all the formalities of a deed, approved in writing by the then trustee(s) of the trust, and delivered to the trustee(s), effective upon the delivery unless the instrument specifically postpones the effective date to a later time or to his or her death (rescindable by him or her, as the case may be, in similar manner any time prior to the effective date), the child shall have the right and power, subject to the trustees' discretionary approval, to appoint any part or all of the total net assets contained on the effective date in the trust to or among or for the benefit of any person or persons (whether or not then in being),

PLR-162062-02

in any amounts or proportions, provided, however, that the power shall not be exercisable to any extent for the benefit of its holder, his or her estate, his or her creditors or the creditors of his or her estate. Any appointment under these powers may be made for any present or future, vested or contingent estate or estates either outright or in trust, and if in trust, subject to the limitations of Section 6.1, and with one or more objects as beneficiaries and with the trustee(s), the administrative powers, any newly created powers of appointment and subject to lawful spendthrift provisions, all as specified in the instrument exercising the power, provided always, however, that no appointment under a power shall benefit directly or indirectly one who is not a permissible object of the power as specified in this section. The trustees' discretion to approve or disapprove any proposed appointment shall be absolute, complete and uncontrollable as are the discretions referred to in Section 4.2(c)(1).

Section 4.6 of the Series II Trust Agreement provides that each separate trust under Article IV shall terminate upon the death of the survivor of Grantor 1's Wife and Grantor 1's child in whose name the separate trust stands.

Section 4.7 of the Series II Trust Agreement provides that upon the termination of a separate trust under Article IV (and upon any subsequent allocation to the trust or to the share in the name of the child in whose name the trust stood or would have stood), all of the net unappointed assets then remaining in the trust (or any subsequently allocated to the trust or to the share) shall be divided among and distributed forthwith to those of the lineal descendants of the child of Grantor 1 in whose name the separate trust stood (or would have stood) who are then living, per stirpes, provided, however, that the share of each then living grandchild of Grantor 1 shall not be distributed to the grandchild but shall rather be continued in trust as the corpus of a separate and distinct trust of which the grandchild shall be the primary beneficiary, the provisions of each separate trust being set forth in Article V. If, however, at the time thus specified for the termination of the separate trust, there shall be no then living lineal descendant of the child of Grantor 1 in whose name the separate trust stood (or would have stood), the net assets shall instead be divided among and distributed forthwith to those of Grantor 1's lineal descendants who are then living, per stirpes; provided, however that if, at any time for any such division and distribution, there shall be in existence a trust that stands in the name of any child of Grantor 1 (under the provisions of Article IV), any share otherwise distributable to the child or to any descendant of the child shall instead be transferred and added to the corpus of the separate trust and shall thereafter be held, managed and disposed of in the same manner as the corpus to which the share is added; and provided further, that if, at the time for any division and distribution, there shall be in existence a trust that is for the primary benefit of any grandchild of Grantor 1 (under the provisions of Article V), any share otherwise distributable to the grandchild shall instead be transferred and added to the corpus of the trust and shall thereafter be held, managed and disposed of in the same manner as the corpus to which the share is added. If, however, at the time for the making of any division and distribution, there shall be no lineal descendant of Grantor 1 then living, the net assets shall instead be distributed forthwith, free of trust, one-half to the person(s) who, under the laws of descent and distribution, would be entitled to Grantor 1's Wife's personal property and one-half to the person(s) who,

PLR-162062-02

under the laws, would be entitled to Grantor 1's personal property, and in the proportions to which the persons would be so entitled, had both of them died at that time intestate and residents of State 2 (regardless of the actual time or place of their deaths).

Section 6.1(b) of the Series II Trust Agreement provides that all other provisions to the contrary notwithstanding, each and every trust at any time coming into existence hereunder, unless earlier terminated, shall in any and all events terminate on the day prior to the expiration of twenty-one years after the death of the last survivor of those now living persons whose names appear in this instrument (other than as witnesses and notaries) and those of their respective lineal descendants who are living on the date of the instrument. Upon termination of a trust under this section, its independent trustee shall pay over all of the net assets then contained in the trust to the then beneficiary to whom distributions of the of the income of the trust might then be properly made (or if there be more than one beneficiary, then to the beneficiaries according to their then respective apparent proportionate interests in the trust as determined in the reasonable discretion of the trustee).

Section 8.1 of the Series II Trust Agreement provides, in part, that Grantor 1, Grantor 1's Wife, and Child 1, shall each, while living and not incapacitated, independently and concurrently, have the absolute right and power at any time or times, with or without cause, to remove any then acting trustee of any trust hereunder, by causing written notice of removal setting forth the effective time and date thereof to be delivered personally or sent by registered mail to such trustee prior to the effective time. Similarly, after the death or incapacity of each of the three persons (Grantor 1, Grantor 1's Wife, and Child 1), any independent trustee of any trust may at any time or times be removed, with or without cause, by either (a) the then acting family trustee of the trust, or (b) the Advisory Committee, if it is then in existence having jurisdiction over the trust and acts unanimously.

Section 8.2(b) of the Series II Trust Agreement provides that upon the death of Grantor 1, the then acting independent trustee, if any, shall resign. The vacancy in the office of independent trustee with respect to the original trust that exists or results upon Grantor 1's death shall initially be filled, (i) if either Grantor 1's Wife or Child 1 is then living, by Trustee 2, or (ii) if neither Grantor 1's Wife nor son are then living, by Bank. If the above designated immediate successor independent trustee for any reason cannot or does not act, or if any vacancy in the office of independent trustee thereafter occurs at any time or times with respect to any trust hereunder, whether caused by resignation, removal, incapacity, death or otherwise, the vacancy in office shall be promptly filled by a bank or trust company that is located in some state in the United States, that has trust powers, and that has a combined capital surplus in excess of \$10,000,000, or by an individual who is sui juris, who is experienced in business and finance or who is an attorney experienced in the trust and tax fields, and who neither a beneficiary nor related to any beneficiary in any of the following classifications: spouse, ancestor, lineal descendant, brother or sister, nor an employee of any beneficiary or of any corporation, firm or partnership in which any beneficiary is an executive or has stock or other holdings that are significant from the viewpoint of control. The selection and

PLR-162062-02

appointment of the successor independent trustee shall be made, in the following order of preference, (a) by Child 1 if he is then living and not incapacitated, (b) by Grantor 1's Wife if she is then living and not incapacitated, (c) by the Advisory Committee, if one is then in existence with respect to the trust, acting unanimously, (d) by the then acting family trustee of the trust, if there be one, or (e) by the then beneficiary or beneficiaries (as that term is used in Section 8.1 of the trust agreement) of the trust, acting by majority vote if there be more than one, each such beneficiary being entitled to one vote, such vote to be cast by written ballot signed by the beneficiary, and for these purposes, if a beneficiary is not then sui juris, his or her parent, spouse or legally appointed guardian, in that order of preference, shall take such action in his or her place and stead; provided, however, that unless the successor independent trustee is selected by Grantor 1's Wife or by Child 1, the successor independent trustee shall not be an individual but must be a bank or trust company.

Section 8.3 of the Series II Trust Agreement provides that in the event of any vacancy in the office of family trustee with respect to any trust hereunder, whether caused by resignation, removal, incapacity to act, death or otherwise, such vacancy may, at any subsequent time, be filled by an individual who is sui juris (including even the person making the appointment) selected and appointed, in the following order of preference, (a) by Grantor 1, if he is then living and not incapacitated, (b) by Grantor 1's Wife, if she is then living and not incapacitated, (c) by the Advisory Committee, if one is then in existence with respect to the trust, acting unanimously, (d) by Child 1, with respect to any trust for the principal benefit of himself and members of his family, if he is then living and not incapacitated; by Child 3, with respect to any trust for the principal benefit of herself and members of her family, if she is then living and not incapacitated; and by Child 2, with respect to any trust for the principal benefit of herself and members of her family, if she is then living and not incapacitated, or (e) by the then beneficiary or beneficiaries (as that term is used in Section 8.1 of the trust agreement) of the trust, acting by majority vote if there be more than one, each such beneficiary being entitled to one vote, such vote to be cast by written ballot signed by the beneficiary, and for these purposes, if a beneficiary is not then sui juris, his or her parent, spouse or legally appointed guardian, in that order of preference, shall take such action in his or her place and stead. Until the person (or group) having the highest priority in the order of preference in the selection of a successor to fill a vacancy in the office of family trustee with respect to a trust actually appoints a successor to fill the vacancy, the office shall remain vacant and the independent trustee of the trust shall act alone as the sole trustee of the trust. Whenever under the provisions of the instrument one or more separate trusts are created out of the assets of a then existing trust hereunder, the then acting trustee(s) of the existing trust shall automatically be the initial trustee(s) of the new separate trust(s).

There are currently two trusts being administered under the trust agreement. Trust IIA is for the primary benefit of Child 1. Trust IIB is for the primary benefit of Child 2. The trust created under the Series II Trust Agreement for the benefit of Child 3 terminated on her death.

Series III Trusts

PLR-162062-02

Grantor 2 created the Series III Trusts on Date 7. The Series III Trust Agreement designates Trustee 1 as the family trustee and Trustee 2 as the independent trustee. The Series III Trusts are irrevocable trusts.

Section 1.1 of the Series III Trust Agreement provides that the trustees, without the necessity of physical segregation, shall divide the trust property into three equal parts, the parts to be designated by the letters "A", "B", and "C", respectively, one part for each of the grantor's three children: Child 1, Child 2, and Child 3. Part "A" for Child 1 shall be further divided into four equal parts, designated as parts "A-1", "A-2", "A-3", and "A-4", respectively, one such part for Child 1, and one for each of his three children: Grandchild 1, Grandchild 2, and Grandchild 3. Part "B" for Child 2 shall be further divided into two equal parts, designated as parts "B-1" and "B-2", respectively, one part for Child 2 and the other part for her son, Grandchild 4. Part "C" shall remain as one part, designated as part "C-1" for Child 3. Each of the seven parts shall constitute the corpus of a separate and distinct trust for the primary benefit of the person whose interest the part represents, and each such person shall be considered as the initial "beneficiary" of his or her respective separate trust.

Section 1.2(a) of the Series III Trust Agreement provides that with respect to Child 1, Child 2, and Child 3, during the remainder of the lifetime of each child, any part or even all of the then total combined net income and/or corpus of all of the separate trusts having the same letter designation (i.e., "A", "B" or "C") as the letter designation of the separate trust with respect to which the child is the primary beneficiary, so far as possible in equal amounts from each, may, at any time or times, in the sole discretion of the independent trustee(s) of the trusts, be distributed to or for the benefit of the child. Section 1.2(b) provides that during the existence of the separate trusts, any part or even all of the then net income and/or corpus of the trust, but exclusive of any subaccount provided for in Section 1.5, may, at any time or times, in the sole discretion of the independent trustee of the trust, be distributed to or for the benefit of the beneficiary, or any one or more of the then beneficiaries, of such separate trust and/or to or for the benefit of any one or more of those of the lineal descendants of the beneficiary or beneficiaries who are also lineal descendants of the grantors and who are then living even though not now living, including those whose parent or parents are then living. Where there is more than one beneficiary of a separate trust, the distributions from such trust need not be equal nor proportionate nor need they bear any relationship whatsoever to the amount of the then interests of the respective beneficiaries in the net assets of such trust as computed for the purposes of Sections 1.5, 1.6, and 3.1, and in the discretion of the independent trustee, the total distributions to one beneficiary may properly exceed to any extent the amount of his or her apparent interest in the trust even though this will have the effect of depleting the amount of the other beneficiaries' apparent interests in the trust.

Section 1.2(c) of the Series III Trust Agreement provides, in part, that the discretion with respect to the distribution of income and/or corpus are absolute discretions to be exercised by each independent trustee in accordance with the trustee's own best judgment under all of the then circumstances (as can reasonably be

PLR-162062-02

ascertained by the trustee) and without any requirement to balance the possibility of conflicting interests of the various beneficiaries, both present and contingent.

Section 1.3 of the Series III Trust Agreement provides that if, at the end of any federal income tax accounting year of any separate trust, any of its net income for the year remains undistributed, the undistributed net income shall be added to and become a part of the trust's corpus.

Section 1.4(a) of the Series III Trust Agreement provides that from time to time after the death of the grantor during the remainder of the respective lifetime of each of the grantor's children, by written instrument executed by him or her, with all the formalities of a deed, approved in writing by the then trustee(s) of the affected trust or trusts, and delivered to one of the trustees, effective upon the delivery unless the instrument specifically postpones the effective date to a later time during the continuance of the affected trust(s), such as the time of his or her death (rescindable by him or her in a similar manner any time prior to the effective date), each of the grantor's children, independently, shall have the right and power, subject to the trustees' discretionary approval, to appoint any part or all of the total combined net assets contained on the effective date in any one or more of the separate trusts having the same letter designation (i.e., "A", "B" or "C") as the letter designation of the separate trust with respect to which the child is the primary beneficiary, in amounts from each as he or she shall specify, to or among or for the benefit of any person(s) (whether or not then in being), in any amounts or proportions. However, the power is not exercisable to any extent for the benefit of the child, his or her estate, his or her creditors, or the creditors of his or her estate.

Section 1.4(b) of the Series III Trust Agreement provides that from time to time after the grantor's death during the remainder of the respective lifetime of each beneficiary of any trust who shall have attained at least thirty years of age and who is a lineal descendant of the grantor, by written instrument executed by him or her with all the formalities of a deed, approved in writing by the then trustee(s) of the affected trust or trusts, and delivered to one of the trustees, effective upon the delivery unless the instrument specifically postpones the effective date to a later time during the continuance of the affected trust(s), such as the time of his or her death (rescindable by him or her in a similar manner any time prior to the effective date), each beneficiary, independently, shall have the right and power, subject to previous valid appointments under Section 1.4(a) of the trust agreement and subject to the trustees' discretionary approval, to appoint any part or all of the total net assets contained on the effective date in any separate trust or trusts with respect to which he or she is then the sole beneficiary (as that term is used in the trust agreement), to or among or for the benefit of any person(s) (whether or not then in being), in any amounts or proportions. This power, however, is not exercisable to any extent for the benefit of its holder, his or her estate, his or her creditors, or the creditors of his or her estate.

Section 1.6(a) of the Series III Trust Agreement provides that upon the death of a beneficiary of a separate trust who is a lineal descendant of the grantor, the individual (or individuals in the proportions specified), other than the estate of the beneficiary and

PLR-162062-02

other than the creditors of the beneficiary or of his or her estate, as the beneficiary may designate by written instrument executed by the beneficiary with all the formalities of a deed and delivered to one of the trustees prior to the beneficiary's death (rescindable by the beneficiary in a similar manner at any time prior to death), shall become a successor beneficiary (or beneficiaries) of the separate trust to the extent of the deceased beneficiary's then interest in the undivided net assets of the trust.

Section 3.1(b) of the Series III Trust Agreement provides, in part, that all separate trusts not earlier terminated shall terminate on the day prior to the expiration of twenty-one years after the death of the last survivor of those persons whose names appear in the instrument (other than as witnesses and notaries) and those of their respective lineal descendants who are living on Date 7. Upon termination of a trust under this section, its trustees shall pay over all of the net assets contained in the trust to the primary beneficiary to whom distributions of the income of the trust might then be properly made (or if there is more than one beneficiary, then to the beneficiaries according to their respective apparent proportionate interests in the trust as determined in the reasonable discretion of the trustee).

Section 4.1 of the Series III Trust Agreement provides, in part, that the absolute right, at any time(s) and with or without cause, to remove any then acting family trustee of a particular trust is given to the first in the order of the following-listed persons (indicated below as having removal rights with respect to the particular trust involved) who is not then deceased or incapacitated: (a) Child 1 as to each and every trust hereunder, (b) Child 3, with respect to any trust for the principal benefit of herself and/or members of her family and Child 2, with respect to any trust for the principal benefit of herself and/or members of her family, and (c) the then beneficiary or beneficiaries of the trust, acting by majority vote if there be more than one. Furthermore, any independent trustee of any trust may at any time or times be removed by the then acting family trustee of the trust, if there is one, any such removal to be by notice as provided in this section. The notice of removal must set forth some reasonable cause, such as a personality conflict with the trustee or its personnel assigned, that the trustee's fees are not competitive, or that the trust would be more conveniently administered in another city.

Section 4.2 of the Series III Trust Agreement provides that in the event, under any other circumstances, of any vacancy at any time or times occurring in the office of independent trustee with respect to any trust hereunder, whether caused by resignation, removal, incapacity to act, death or otherwise, such vacancy in office shall be promptly filled by a bank or trust company that is located in some state in the United States, that has trust powers, and that has a capital and surplus in excess of \$10,000,000, or by an individual who is sui juris, who is experienced in business and finance or who is an attorney experienced in the trust and tax fields, and who is neither the grantor nor a beneficiary nor related to the grantor or to any beneficiary in any of the following classifications: spouse, ancestor, lineal descendant, brother or sister, nor an employee of either of the grantors or of any beneficiary or permissible distributee or of a corporation, firm or partnership in which either grantor or any beneficiary or permissible distributee is an executive or has stock or other holdings that are significant from the

PLR-162062-02

viewpoint of control. The selection and appointment of such successor independent trustee shall be made, in the following order of preference, (a) by the family trustee of the trust, or if there is none, (b) by the person having the right to fill a vacancy in the office of family trustee with respect to the affected trust, or if there is no person then having the right, (c) by the then beneficiary or beneficiaries of the trust, acting by majority vote if there be more than one. Unless the appointment is made by the original family trustee, the successor independent trustee shall not be an individual but must be a bank or trust company. Furthermore, upon the death or incapacity of the original family trustee, if the then acting independent trustee is an individual, he or she shall resign.

Section 4.3 of the Series III Trust Agreement provides that in the event of any vacancy in the office of family trustee with respect to any trust hereunder, whether caused by resignation, removal, incapacity to act, death or otherwise, such vacancy may at any time be filled by an individual who is sui juris and has attained at least twenty-five years of age (including even the person making the appointment) selected and appointed by the person having the right under Section 4.1 to remove the family trustee.

There are currently seven trusts being administered under the trust agreement. Trust IIIA-1, Trust IIIA-2, Trust IIIA-3, and Trust IIIA-4 are for the primary benefit of Child 1 and his family line. Trust IIIB-1 and Trust IIIB-2 are for the primary benefit of Child 2 and her family line. Trust IIIC-1 was initially for the primary benefit of Child 3 and her family line, but since the death of Child 3 and Child 3's Spouse the trust has been administered for the benefit of Child 1 and Child 2 and each child's family line. Since neither Child 1 nor Child 2 is the sole beneficiary of Trust IIIC-1, no beneficiary holds a power of appointment over the assets in it.

Trust Company

On Date 8, Family X and Family Y entered into a participation agreement and later filed the Articles of Association for Trust Company, a limited banking association, in State 1. As part of that agreement, the initial participants adopted bylaws to provide for the orderly management of Trust Company. Trust Company was formed to provide specialized services to individuals and families facing the same challenges in trust management as Family X and Family Y. The bylaws and participation agreement were amended and restated on Date 9. Additional modifications have been proposed that are the subject of this private letter ruling request. Excerpts from the bylaws and participation agreement in this letter reflect the Date 9 modifications and the proposed modifications.

Trust Company initially had two classes of shares, Class A and Class B, each of which represent fifty percent of the total voting power of all Trust Company's outstanding shares. Family X owns all of the Class A shares and Family Y owns all of the Class B shares. The Class A shares were initially issued to and are still held by two trusts (Trust IIA and Trust IIB) whose grantor and beneficiaries are members of Family X and whose trustees are unrelated to members of Family Y. The Class B shares were

PLR-162062-02

initially issued to a voting trust of which eleven trusts for the benefit of the members of Family Y are the beneficial owners. Grantor 1 and Grantor 2 are members of Family X.

On Date 9, the Articles of Association of Trust Company were amended to authorize the issuance of shares of Class E stock. The Class E stock will have no voting rights except as set forth in Section 4.2(b)(2) of the Bylaws and Participation Agreement relating to the authorization of additional Class E shares and the amendment of the restrictions on transfer of ownership of the Class E shares. Under the amendment, Class A shares may only be transferred to Class A permitted transferees, Class B shares may only be transferred to Class B permitted transferees, and Class E shares may only be transferred with the approval of the holders of more than sixty-five percent of the issued and outstanding Class E shares.

Section 7.2 of the bylaws and participation agreement of Trust Company provides in part that there shall initially be nine directors of Trust Company. The board of directors may expand the number of director positions. Notwithstanding the foregoing, Trust Company shall not have less than five or more than fifteen directors.

Section 7.17(a) of the bylaws and participation agreement of Trust Company provides that no officer or director of Trust Company shall participate in a decision of Trust Company (nor be present during any board or committee discussion of or vote on such a decision) involving the exercise of any discretionary power, other than investment powers, with respect to any trust of which Trust Company is a trustee if the officer, director, or spouse of such officer or director is:

- (1) a grantor or donor to such trust,
- (2) a current or contingent beneficiary of such trust, or
- (3) a descendant, or spouse (or former spouse) of a descendant of either Patriarch X or Patriarch Y. Section 7.17(a)(3), however, shall apply only to a trust a current or contingent beneficiary of which is a descendant, or a spouse (or former spouse) of a descendant of either Patriarch X or Patriarch Y.

Section 7.17(b) provides that no officer or director of Trust Company shall participate in a decision of Trust Company (nor be present during any board or committee discussion of or vote on such a decision) involving the exercise of any incidents of ownership of any life insurance policy insuring the life of such officer or director.

Section 7.17 further provides that a director that is subject to the restrictions of Section 7.17 with respect to a decision of Trust Company, although absent from at least that part of the meeting, shall be deemed present for the purpose of determining whether a quorum is present for that part of the meeting.

Section 7.18 of the bylaws and participation agreement provides that an "Independent Director" is a director who is neither an employee of Trust Company nor, with respect to a particular trust of which Trust Company is a trustee, related or subordinate within the meaning of § 672(c) to any individual described in

PLR-162062-02

Section 7.17(a)(1), (2), or (3). The board of directors and the participants shall take all necessary actions to cause there to be in office at all times at least one director who is not precluded under Section 7.18 or Section 7.19 from participating in the making of any decisions of Trust Company described in Section 7.17.

Section 7.19 of the bylaws and participation agreement provides that subject to the requirements of applicable law and to enable directors to comply when advisable with taxation laws, restrictions on self-dealing, or other matters, a director is authorized to renounce, either revocably or irrevocably, for any period of time, by an instrument in writing delivered to and accepted by Trust Company, his or her right and power to participate in the making of any Trust Company decision involving the exercise of any discretionary power, other than investment or administrative powers not affecting any beneficiary's beneficial enjoyment, with respect to any trust of which Trust Company is a trustee.

Proposed Trust Restructuring Plan

The current trustees propose to consolidate the trusts created under the Series I, Series II, and Series III Trust Agreements. Trust IA-1, Trust IA-2, Trust IA-3, Trust IA-4, Trust IIA, Trust IIIA-1, Trust IIIA-2, Trust IIIA-3, and Trust IIIA-4, will be consolidated into Trust A, a single new trust for the benefit of Child 1's and his descendants. Trust IB-1, Trust IB-2, Trust IIB, Trust IIIB-1, and Trust IIIB-2, will be consolidated into Trust B, a single new trust for the benefit of Child 2's and her descendants. The consolidation of these trusts will significantly reduce the annual administrative expenses paid with respect to the trusts and will make the family's trust arrangements less complex. Trust IC-1 and Trust IIIC-1 were initially created for the primary benefit of Child 3. Child 3 died without issue and these two trusts did not terminate on her death. Trust IC-1 and Trust IIIC-1 will merged and then divided, generally on a per stirpes basis, into four new trusts (Trust C, Trust D, Trust E, and Trust F), one each for the primary benefit of Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4. The A/B consolidations and the C division will be achieved by the independent trustee's exercise of his distribution discretion over the sixteen current trusts to appoint their assets to six new trusts, each governed by a new trust agreement.

Unless otherwise specified, the new trust agreement relevant provisions are identical to each other except for the name of the primary beneficiary. Each new trust agreement provides that the six new trusts and all trusts resulting from a new trust will terminate on or before the date on which its counterpart original trust was required to terminate under its applicable perpetuities period. In addition, the current trustees will, via the new trust agreements, update each trust's administrative provisions and revise each trust's trustee requirements, trustee selection, and trustee succession provisions to better provide for the long-term management of the trusts. Finally, the current trustees desire to appoint Trust Company to serve as an independent trustee.

On Date 10, the trustees filed a Petition for Instructions with Probate Court in State 2. Probate Court is the court having jurisdiction over all the trusts that are the subject of this private letter ruling. The Petition for Instructions sought confirmation of

PLR-162062-02

the independent trustee's authority to exercise his discretionary power of distribution in favor of further trusts. On Date 11, Probate Court issued sixteen separate orders (one for each trust) contingent upon a private letter ruling from the Internal Revenue Service regarding the estate and generation-skipping transfer tax consequences of the exercise. The orders stated that the trust instruments grant the independent trustee a discretionary power of distribution that may be exercised in favor of one or more new trusts created by him for the benefit of all or any one of the permissible distributees under the original trusts, equally or unequally. The orders further provided that the power could be exercised by the independent trustee without either beneficiary consent or court approval if the new trusts do not benefit anyone who was not a current or future permissible distributee under the relevant original trust and the terms of the new trust do not extend the duration of the trusts beyond the perpetuities period of the relevant original trust.

General New Trust Agreement Provisions

Section 1.2(a) of each new trust agreement will provide that during the remainder of the primary beneficiary's lifetime and until the trust's termination, any part or all of the net income and/or principal of the trust may be distributed, in the sole discretion of its independent trustee(s), to (or for the benefit of) any one or more of the following permissible distributees: (I) the primary beneficiary, (II) any one or more of the primary beneficiary's descendants, (III) any unremarried surviving spouse of any deceased descendant of the primary beneficiary, (IV) any entity then wholly owned and controlled by one or more of the then permissible distributees described in this paragraph, and (V) any trust (that is at the time a "qualified distributee trust" as defined in the trust technical provisions) for the primary benefit of any one or more of the above individual permissible distributees, even a newly created trust. The foregoing discretion to make or withhold distributions of income and principal to the permissible distributees is an absolute discretion to be exercised solely in accordance with the independent trustee's(s') own best judgment. At the end of each tax year, any income that is not distributed shall be added to principal. All distributions made to a child of the primary beneficiary after attaining age twenty-three, as well as certain distributions made before that age (for example, to get married, acquire a home, etc.) if so designated by the independent trustee(s), are to be treated as advances on that child's ultimate share of the trust (as are all distributions to that child's children).

Section 1.2(b) of each new trust agreement will provide that with the approval of the then independent trustee(s) of the trust, the primary beneficiary shall have the power to "appoint" any part or all of that trust's assets, effective at any time during the affected trust's existence, to (or in trust for) any person or persons, but the power shall not be used to benefit the primary beneficiary, the primary beneficiary's estate, or the creditors of either.

Section 1.3(a) of each new trust agreement will provide that after the primary beneficiary's death, unless the primary beneficiary has directed otherwise by the exercise of the nongeneral power of appointment under Section 1.2(b), while the deceased primary beneficiary has two or more children, at least one of whom is under

age twenty-three, the trust's remaining assets shall continue in an "interim trust" in that beneficiary's name having the provisions set forth in Section 1.5.

Section 1.3(b) of each new trust agreement will provide that after the primary beneficiary's death, unless the primary beneficiary has directed otherwise by the exercise of the nongeneral power of appointment under Section 1.2(b), if none of the primary beneficiary's children are under age twenty-three (or only one child of the primary beneficiary is living), the remaining trust assets shall be disposed of as follows: (1) If the primary beneficiary left a "qualified surviving spouse" who is living and not remarried, one-half of the remaining trust assets (all if no descendant or unremarried qualified surviving spouse of a descendant of the primary beneficiary is living) shall be transferred to a separate "spousal trust" for the surviving spouse having the provisions set forth in Section 1.6. A surviving spouse is "qualified" if the beneficiary and the spouse were married at least fifteen years or there is at least one child from the marriage. (2) The trustees shall dispose of the balance of the remaining trust assets (all, one-half, or none of the remaining assets, depending on the circumstances) as follows: (A) The trustees shall divide the remaining trust assets into equal subshares, one in the name of each child of the deceased primary beneficiary who is living and one in the name of each who is deceased who has any descendant and/or unremarried qualified surviving spouse (of that child or of a descendant of that child) living, and: (i) each subshare in the name of a living child shall be transferred to a family trust in that child's name, the provisions of which are set forth in Section 1.4, and (ii) each subshare in the name of a deceased child who has any descendant and/or an unremarried qualified surviving spouse (of that child or of a descendant of that child) living shall be divided into further subshares for the family member(s) pursuant to Section 1.3, in like manner as if the deceased child of the deceased primary beneficiary had survived the primary beneficiary, become the primary beneficiary of a family trust in that child's name, and then died; and each such further subshare shall be transferred to a family, interim, or spousal trust for the family member(s) whose further subshare it is (described in Section 1.4, 1.5, or 1.6 below, depending upon whose further subshare it is). (B) If the deceased primary beneficiary has no surviving family member the trustees shall first determine who is the deceased primary beneficiary's closest ancestor who either (i) is Patriarch X or (ii) both was a descendant of Patriarch X and has a descendant (or unremarried qualified surviving spouse of a descendant or of that ancestor) living (excluding any who has been a "donor" of any of the assets thus being disposed of). The trustees shall then divide the remaining trust assets into equal subshares, one in the name of each living child of that ancestor and one in the name of each child of that ancestor who is deceased who has any descendant and/or unremarried qualified surviving spouse (of that child or of a descendant of that child) living (excluding, in each case, an individual who has been a donor of the assets). Finally, the trustees shall dispose of those subshares as follows: (I) each subshare in the name of a living child of that ancestor shall be added to (or shall initially constitute or reconstitute) a family trust under Article 1 in that child's name and (II) each subshare in the name of a deceased child of that ancestor who has any descendant and/or unremarried qualified surviving spouse (of that child or of a descendant of that child) living shall be divided into further subshares for the family member(s) pursuant to Section 1.3 in like manner as if that deceased child had survived the primary

PLR-162062-02

beneficiary, become the primary beneficiary of a family trust in that child's name, and then died; and each further subshare shall be added to (or shall initially constitute or reconstitute) a family, interim, or spousal trust for the family member(s) whose further subshare it is described in Sections 1.4, 1.5 or 1.6, depending upon the family member(s) whose further subshare it is. (C) If only the spouse of the beneficiary's closest ancestor is living (that is, no descendant or unremarried qualified surviving spouse of any descendant of that ancestor is living), the remaining trust assets shall be added to (or shall initially constitute or reconstitute) a spousal trust for the benefit of that ancestor's unremarried qualified surviving spouse as described in paragraph (1) above (excluding any "donor" of any of the assets thus being disposed of).

Section 1.3(c) of each new trust agreement will provide that if no family member is living (that is, no one designated above is living when the transfer is to be made), the trustees shall instead distribute the remaining trust assets one-half to the heirs of Grantor 1 and one-half to the heirs of Grantor 2 living as of that time (in trust as to the share of each descendant of any of the grantors' grandparents).

Section 3.2(d) of each new trust agreement will provide that the family trustee may remove the corporate independent trustee for the reasons set forth in Section 3.2(d)(1) of the Trust Technical Provisions incorporated by Addendum A of each new trust agreement. The individual independent trustee may remove the corporate independent trustee with or without cause.

Section 3.2(d)(1) of the Trust Technical Provisions for each new trust will describe the circumstances in which the family trustee may remove the corporate independent trustee. Section 3.2(d)(1)(A) will provide that the removal power may not be exercised in a manner contrary to the specific restrictions on fiduciary actions listed in Section 4.2(a) of the Trust Technical Provisions.

Section 3.2(d)(1)(B) of the Trust Technical Provisions for each new trust will provide that the notice of removal will set forth the reason(s) for the removal of the corporate independent trustee. The reasons need not be such as to justify judicial removal and include the following: (i) the family trustee believes the expense of administering the trust can be reduced, or its investment needs can be better served, by a trustee change; (ii) a personality conflict or difference of opinion as to the investment philosophy to be followed by the trust has arisen with the trustee (or the trust officer assigned); (iii) the trustee's reports are not responsive to the needs of the family trustee; (iv) the trust would be more conveniently administered in another location; or (v) the trustee's services are being adversely affected by ineffectiveness, unavailability, trust officer turnover, or inexperience.

Section 3.2(e) of each new trust agreement will provide that the family trustee may remove the then acting individual independent trustee for the reasons set forth in Section 3.2(e) of the Trust Technical Provisions. Section 3.2(e) of the Trust Technical Provisions will describe the circumstances in which the family trustee may remove the individual independent trustee. Section 3.2(e)(1) will provide that the power may not be exercised in a manner contrary to the specific restrictions on fiduciary actions listed in

PLR-162062-02

Section 4.2(a) of the Trust Technical Provisions. Section 3.2(e)(2) will provide that the notice of removal will set forth the reason(s) for the removal that must meet the criteria and, in general, be of the kind described in Section 3.2(d)(1)(B), except for sub-section 3.2(d)(1)(B)(v). In addition, Section 3.2(e)(2) will provide that the individual independent trustee may be removed if the trustee's services are being adversely affected by age, health, ineffectiveness, unavailability, or inexperience.

Section 3.2(f) of each new trust agreement will provide that the right to remove the family trustee of each (with or without cause) is held by the top control list person (or persons) who shall be the first in order and is "eligible" to act. An individual will be treated as "eligible" to act as a family trustee control list person if he or she is not incapacitated and at least age twenty-five (or at least age twenty-one if he or she is one of the "most senior generation" descendants of a particular individual). When two or more persons occupy a place on the control list, their removal, appointment, and other actions must be by a majority of them. Section 3.2(f)(6) of the Trust Technical Provisions will provide, in part, that when only two people hold a right or power with respect to a trust, the two must act together unanimously.

Section 3.3(a) of each new trust agreement will provide that whenever a vacancy exists in the office of family trustee for any trust created under the trust agreement, the control list person(s) then having, and while continuing to have, the right to remove the family trustee of that trust may, at any time, select and appoint an individual (age twenty-five or older), even the appointor himself or herself, to fill the vacancy (that, until thus filled, shall remain vacant).

Section 3.3(b) of each new trust agreement will provide whenever a vacancy exists in the office of an independent trustee of any trust if the office is required to be kept filled (under the provisions of Section 3.1 or Section 3.5), the office shall be promptly filled by a qualified successor to that office (or to either office, if there is not stipulation then in effect under Section 3.5). The successor independent trustee shall be selected and appointed by the family trustee of the trust. If the vacancy is not filled within thirty days (or if there is no family trustee when the vacancy occurs), the successor independent trustee shall be selected and appointed by the top control list person(s) for the trust. If the vacancy is not filled within thirty days of when the top control list person (or all of those persons) first becomes aware that the vacancy had not been (or could not be) filled, the successor shall be selected and appointed by the representative beneficiary (or the representative beneficiaries) of the trust. If the vacancy is not filled within sixty days of when the representative beneficiary (or all of them) first becomes aware that the vacancy had not been filled, the successor shall be selected and appointed by the court having jurisdiction over the trust.

Section 3.3(c) of each new trust agreement will provide that whenever a trust has only one independent trustee then acting and its other independent trustee office is not then required to be kept filled or left vacant (under Section 3.5), that trust's then family trustee may at any time appoint a second independent trustee (meeting the qualifications of the vacant office). Until such appointment is made, or until the circumstances change, the other independent trustee office shall remain vacant.

PLR-162062-02

Section 3.4(a) of each new trust agreement will provide that a corporate independent trustee must be an “independent” bank or trust company as described in Section 3.4(a) of the Trust Technical Provisions. Section 3.4(a) of the Trust Technical Provisions will provide that to be eligible to serve as an independent trustee of a specific trust under the trust agreement, a bank or trust company must have certain “corporate independent trustee qualifications.”

Section 3.4(a)(2) of the Trust Technical Provisions will provide that the corporate independent trustee position must be filled by a bank or trust company with respect to which no donor to or current or contingent beneficiary of that trust personally holds voting rights, regardless of whether the rights are held in an individual or a fiduciary capacity (or both) that, when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the bank or trust company.

Section 3.4(a)(3) of the Trust Technical Provisions for each new trust will provide that the bank or trust company must maintain and enforce “firewall rules” prohibiting any individual who is “connected” to the bank or trust company (including an officer, director, employee, or “one percent shareholder”, as defined in the document) from participating in a decision of the bank or trust company involving the exercise of either: (A) any incidents of ownership with respect to any insurance on the life of the individual, whether owned by the bank or trust company or owned by any trust as to which the bank or trust company is acting as an independent trustee, and/or (B) any discretionary power, other than investment or administrative powers not affecting any current or contingent beneficiary’s enjoyment of that trust, the effect of which would be to make or withhold any distribution from (or to grant or withhold permission to enjoy any asset of) that trust in favor of: (i) any individual (if the connected individual is a living donor or an individual related to a living donor) or (ii) a current or contingent beneficiary or any individual whom the beneficiary is then under an obligation to support (if the connected individual is the beneficiary or an individual related to the beneficiary), but the paragraph (B) restriction shall not apply to any individual who would be eligible to serve as an individual independent trustee of that trust under paragraph (b)(3) of Section 3.4, substituting for this purpose, “one percent” for “fifty percent” in subparagraph (B) of Section 3.4(b)(3).

Section 3.4(a)(3)(B)(ii)(I) of the Trust Technical Provisions for each new trust will provide that a “one percent shareholder” shall mean any individual who holds voting rights, whether the rights are held in an individual or a fiduciary capacity (or both) that, when aggregated with the voting rights of any trust of which the individual is a donor or a current or contingent beneficiary, represent more than one percent of the voting rights of all of the then issued and outstanding shares of the bank or trust company.

Section 3.4(a)(3)(B)(ii)(II) of the Trust Technical Provisions for each new trust will provide that an individual shall be considered to be “related” to a living donor or current or contingent beneficiary if related in any of the following classifications: spouse, ancestor, lineal descendant, brother or sister.

PLR-162062-02

Section 3.4(b) of each new trust agreement will provide that each individual independent trustee shall be an “independent” “experienced” individual who is not related to nor employed by any trust donor or beneficiary as described in Section 3.4(b) of the Trust Technical Provisions. Section 3.4(b) of the Trust Technical Provisions will provide that to be eligible to serve as an independent trustee of a specific trust under the trust agreement, an individual must have certain “individual independent trustee qualifications.” Section 3.4(b)(3) will provide the individual may not be either (A) a donor to or a current or contingent beneficiary of that trust nor related to the donor or beneficiary who is then living in any of the following classifications - spouse, ancestor, lineal descendant, brother, or sister - nor (B) an employee of a donor or current or contingent beneficiary of that trust or of any corporation, firm, or partnership (I) in which a donor or beneficiary is an executive or (II) with respect to which a donor or beneficiary personally holds voting rights, regardless of whether the rights are held in an individual or a fiduciary capacity (or both), that when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the corporation, firm, or partnership.

Section 3.5 of each new trust agreement will provide that the top control list person(s) for any present or future trust may by stipulation require that, under certain circumstances the office of individual independent trustee office shall be (i) kept filled, (ii) left vacant, or (iii) be filled or left vacant as the family trustee may, from time to time, determine.

Addendum A of each new trust agreement will incorporate comprehensive technical provisions that govern all aspects of the administration of the trusts created under the new trust agreements.

Section 4.2(a) of the Trust Technical Provisions for each new trust will provide that all trustees at any time acting with respect to any trust under the trust agreement, when exercising their powers and discretions as trustees, shall act as fiduciaries and not as the holders of powers for their own benefit. Specifically, Section 4.2(a)(6) provides that any power that any trustee of any trust(s) established under Trust Agreement may have to remove any trustee(s) shall be exercisable in accordance with the terms and procedures set forth regarding removal. Furthermore, unless a trustee removal power is expressly referred to or described either: (a) as an absolute right and power that the powerholder may exercise to remove a trustee from office that is exercisable by the powerholder with or without cause or (b) as a power that is not held (or not intended to be held) in a fiduciary capacity, all trustee removal rights shall be exercisable only in furtherance of trust purposes and not as a means of obtaining the personal goals of the powerholder (or a trust beneficiary) by influencing, through trustee removal, the manner in which discretions granted exclusively to the trustee(s) subject to removal are to be exercised. Section 4.2(a)(6)(B) will provide a procedure for a removed trustee to obtain judicial review regarding the whether a decision to remove a trustee was in furtherance of trust purposes or intended to achieve personal goals.

Section 5.1(b)(3) of the Trust Technical Provisions for each new trust will provide that all other provisions of the agreement to the contrary notwithstanding, the trust shall,

PLR-162062-02

unless earlier terminated, terminate on the “rule against perpetuities required termination date” applicable to that trust. The required termination date on which these trusts shall terminate shall be the day prior to the expiration of twenty-one years after the death of the last survivor of a group of individuals composed of the lineal descendants of Patriarch X, Trustee 2, and the lineal descendants of Trustee 2 who were living on Date 5, namely: Child 1, Child 2, Child 3, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Trustee 2, Measuring Life 1, Measuring Life 2, and Measuring Life 3.

Trust Specific Provisions

Trust A

Section 3.1(a) of the Trust A trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that at least one of the two independent trustee must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are “independent trustee” offices. One may be occupied by an individual and the other may be occupied by a corporate independent trustee. Section 3.1(c) will provide that the third trustee position will be the “family trustee” office.

Section 3.2(f)(1)(A) of the Trust A trust agreement will provide that first level of the control list includes Child 1 (or his designees). Section 3.2(f)(1)(B) will provide that the second level of the control list includes Child 1's Spouse (or her designees). Section 3.2(f)(1)(C) will provide that the third level of the control list includes Child 1's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(E) will provide that the fifth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(F) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's primary beneficiary who has an eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X (or the descendant's or descendants' designees).

Section 3.5 provides, in relevant part, that after Child 1's incapacity or death, the corporate trustee office must be kept filled unless the then serving individual independent trustee was nominated by Child 1.

Trust B

Section 3.1(a) of the Trust B trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that at least one of the two independent trustee must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are “independent trustee” offices. One may be occupied by an individual and the other may be occupied by a corporate independent

PLR-162062-02

trustee. Section 3.1(c) will provide that the third trustee position will be the “family trustee” office.

Section 3.2(f)(1)(A) of the Trust B trust agreement will provide that first level of the control list includes Child 1 (or his designees) After Child 1's death or incapacity, Child 1's designees shall be deemed to relinquish the top control list position for as long as Child 2, Grandchild 4, or Grandchild 4's designees would be eligible to act but for Child 1's appointment of designees. Section 3.2(f)(1)(B) will provide that the second level of the control list includes Child 2. Section 3.2(f)(1)(C) will provide that the third level of the control list includes Grandchild 4 (or his designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes Child 2's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(1)(E) will provide that the fifth level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(F) will provide that the sixth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(G) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's primary beneficiary who has an eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X (or the descendant's or descendants' designees).

Section 3.3(a)(2) of the Trust B trust agreement provides that when Child 2 is the top control list person, however, notwithstanding the provisions that generally apply to top control list persons, the sole individual Child 2 may appoint as family trustee in the event of a vacancy in office exists shall be Person 1. Person 1's sole powers as family trustee shall be: (1) to remove any corporate independent trustee, (2) to select and appoint a qualified successor independent trustee, and (3) to expend trust funds in order to evaluate any corporate independent trustee's investment management performance. In the event that Child 2 becomes the top control list person of a trust under the agreement that at that time owns participant shares of Trust Company, the trustee(s) shall distribute the shares equally to Trust Y, and Trust Z.

Trust C

Section 3.1(a) of the Trust C trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that the office of corporate independent trustee must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are “independent trustee” offices. One may be occupied by an individual and the other must be occupied by a corporate independent trustee. Section 3.1(c) will provide that the third trustee position will be the “family trustee” office.

Section 3.2(f)(1)(A) of the Trust C trust agreement will provide that first level of the control list includes Grandchild 1 (or her designees). Section 3.2(f)(1)(B) will provide that the second level of the control list includes Grandchild 1's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the

PLR-162062-02

ancestor's designees). Section 3.2(f)(1)(C) will provide that the third level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(E) will provide that the last level of the control list includes the panel described in Section 3.5(b). For purposes of Trust C only, an individual will be treated as "eligible" to act as a family trustee control list person if not incapacitated and at least twenty-eight years of age (or at least twenty-one years of age if he or she is one of the "most senior generation" descendants of a particular individual). When two or more person occupy a place on a control list, their removal, appointment, and other actions must be by a majority of them. Section 3.2(f)(6) of the Trust Technical Provisions will provide that when only two people hold a right or power with respect to a trust, the two must act together unanimously.

Section 3.5(b)(1)(b) of the Trust C trust agreement will provide that during the lifetimes of Grandchild 1 and each of her children, the individual independent trustee shall be a lawyer who has recognized expertise in the practice of trust law and who is not connected in any business way with the corporate independent trustee (before taking office, each individual independent trustee's qualifications to serve must be certified by a panel comprised of three similarly qualified attorneys).

Trust D

Section 3.1(a) of the Trust D trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that the office of corporate independent trustee must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are "independent trustee" offices. One may be occupied by an individual and the other must be occupied by a corporate independent trustee. Section 3.1(c) will provide that the third trustee position will be the "family trustee" office.

Section 3.2(f)(1)(A) of the Trust D trust agreement will provide that first level of the control list includes Grandchild 2 (or her designees). Section 3.2(f)(1)(B) will provide that the second level of the control list includes Grandchild 2's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(1)(C) will provide that the third level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(E) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's primary beneficiary who has an eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X (or the descendant's or descendants' designees).

Trust E

PLR-162062-02

Section 3.1(a) of the Trust E trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that the office of corporate independent trustee must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are “independent trustee” offices. One may be occupied by an individual and the other must be occupied by a corporate independent trustee. Section 3.1(c) will provide that the third trustee position will be the “family trustee” office.

Section 3.2(f)(1)(A) of the Trust E trust agreement will provide that first level of the control list includes Grandchild 3 (or her designees). Section 3.2(f)(1)(B) will provide that the second level of the control list includes Grandchild 3's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(1)(C) will provide that the third level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(E) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's primary beneficiary who has an eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X (or the descendant's or descendants' designees).

Trust F

Section 3.1(a) of the Trust F trust agreement will provide that any one or more of the three trustee offices may either be occupied or left vacant, provided that at least one of the two independent trustee must at all times be occupied. Section 3.1(b) will provide that two of the trustee positions are “independent trustee” offices. One may be occupied by an individual and the other may be occupied by a corporate independent trustee. Section 3.1(c) will provide that the third trustee position will be the “family trustee” office.

Section 3.2(f)(1)(A) of the Trust F trust agreement will provide that first level of the control list includes Grandchild 4 (or his designees). Section 3.2(f)(1)(B) will provide that the second level of the control list includes Grandchild 4's spouse (or her designees). Section 3.2(f)(1)(C) will provide that the third level of the control list includes Grandchild 4's most senior generation descendant, if any, who is an ancestor of the primary beneficiary (or the ancestor's designees). Section 3.2(f)(1)(D) will provide that the fourth level of the control list includes the primary beneficiary (or that individual's designees). Section 3.2(f)(1)(E) will provide that the fifth level of the control list includes the primary beneficiary's descendant(s) of the most senior generation having an eligible descendant (or the descendant's or descendants' designees). Section 3.2(f)(1)(F) will provide that the last level of the control list includes the most senior generation descendant(s) of the closest ancestor of any of that trust's primary beneficiary who has an eligible descendant, provided that each most senior generation descendant is a descendant of Patriarch X (or the descendant's or descendants' designees).

Interim Trustee Succession Plan

On Date 12, Probate Court in State 2 issued one order affecting each of the trusts that are the subject of this private letter ruling. The orders approve an interim trustee succession plan proposed by the trustees and agreed to by the adult beneficiaries of the various trusts and a guardian ad litem representing the minor and unborn beneficiaries. The agreement signed by the parties defines a “trust restructuring period” that begins on Date 12. The trust restructuring period ends after the Internal Revenue Service issues a private letter ruling and Probate Court issues a final order approving the trust restructuring plan.

With respect to all of the original trusts except Trust IB-1, Trust IB-2, Trust IIIB-1, and Trust IIIB-2, the Date 12 Probate Court order provides that during the trust restructuring period, any requirement that a currently acting individual trustee must resign in favor of a bank or trust company is suspended. In addition, the order creates an additional independent trustee office and appoints Trustee 3 to fill the office. If a vacancy occurs in a co-independent trustee office during the trust restructuring period, that vacancy shall be filled by a qualified individual or left vacant in the discretion of the person(s) who hold the power to appoint a successor independent trustee under the applicable section of the original trust agreement.

With respect to Trust IB-1, Trust IB-2, Trust IIIB-1, and Trust IIIB-2, the Date 12 Probate Court order provides that during the trust restructuring period, any requirement that a currently acting individual trustee must resign in favor of a bank or trust company is suspended. If a vacancy occurs in a co-independent trustee office during the trust restructuring period, that vacancy shall be filled by a qualified individual or left vacant in the discretion of the person(s) who hold the power to appoint a successor independent trustee under the applicable section of the original trust agreement.

Requested Rulings

The trustees have requested the following rulings: (1) the implementation of the proposed trust restructuring plan will not cause the value of the assets of the trusts created under Trust Agreement to be included in the gross estate of any beneficiary under § 2041; and (2) the implementation of the proposed trust restructuring plan will not affect the status of any of the trusts created under Trust Agreement as exempt from the generation-skipping transfer tax.

Ruling 1

Section 2041(a)(2) 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 the decedent has, at the time of his death, a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent the property would be includible in the decedent’s gross estate under §§ 2035 to 2038, inclusive. For purposes of

§ 2041(a)(2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides that a general power of appointment is 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. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) provides, in part, that a power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has not power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of the fiduciary duties is not a power of appointment.

Rev. Rul. 95-58, 1995-2 C.B. 191, holds that a decedent/grantor's reservation of an unqualified power to remove a trustee and appoint an individual or corporate successor trustee that is not related or subordinate to the decedent within the meaning of § 672(c), is not considered a reservation of the trustee's discretionary powers of distribution over the property transferred by the decedent/grantor to the trust. Accordingly, the trust corpus was not included in the decedent's gross estate under §§ 2036 or 2038. The ruling notes that the Eighth Circuit in Estate of Vak v. Commissioner, 973 F.2d 1409 (8th Cir. 1992), concluded that the decedent had not retained dominion and control over assets transferred to a trust by reason of his power to remove and replace the trustee with a party that was not related or subordinate to the decedent. Accordingly, the court held that under § 25.2511-2(c), the decedent made a completed gift when he created the trust and transferred assets to it.

Section 672(c) defines the term "related or subordinate party" to mean any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any one of the following: the grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

In the present case, only the independent trustee(s) possess the power to make discretionary distributions from the trusts. Section 3.2 of the trust agreements and Technical Provisions governing all of the trusts will authorize the removal of the independent trustee(s) by either the family trustee (that may include a beneficiary of the trusts) or the other independent trustee (that may include Trust Company). Section 3.3 of the Trust Agreement and Technical Provisions will describe how vacant trustee

positions will be filled. Section 3.3(b) of the trust agreements will provide that if a vacancy occurs in the office of one of the two independent trustee offices and that office is required to be filled under Section 3.1 or Section 3.5, the appointment of a successor trustee will be made, in order of preference, by the family trustee, the top control list person, the representative beneficiary, or a court having jurisdiction over the trust. Section 3.3(c) of the trust agreements will provide that, if a vacancy in an office of independent trustee is not required to be filled under Section 3.1 or Section 3.5, the family trustee may fill the vacancy or allow the office to remain vacant. In either case, the person or corporation filling the independent trustee office must fill the requirements of the office as described in Section 3.4 of the Trust Technical Provisions.

Section 3.4(b) of the Trust Technical Provisions will preclude a current or contingent beneficiary of a trust from serving as the individual independent trustee. In addition, Section 3.4(a) of the Trust Technical Provisions will preclude any current or contingent beneficiary of a trust from participating in discretionary distribution decisions if they are connected to a bank or trust company serving as the corporate independent trustee. Sections 3.4(a) and 3.4(b) of the Trust Technical Provisions will further preclude any individual related to a beneficiary as spouse, ancestor, lineal descendant, brother, sister, or employee from serving as the individual independent trustee of a trust. In addition, these sections preclude these individuals from participating in discretionary distribution decisions if they are connected to a bank or trust company serving as the corporate independent trustee.

Section 3.4(b) will provide that no employee of any corporation, firm, or partnership in which a beneficiary is an executive or with respect to which a beneficiary personally holds voting rights regardless of whether the rights are held in an individual or a fiduciary capacity (or both), that when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the corporation, firm, or partnership may serve as the individual independent trustee.

Section 3.4(a)(2) requires that the corporate independent trustee be a bank or trust company in which no current or contingent beneficiary of the trust personally holds voting rights that, when aggregated with any voting rights held by that trust, are more than fifty percent of the total voting rights relating to the control of the bank or trust company. Section 3.4(a)(3) will also include a “firewall” provision precluding anyone connected to the bank from participating in discretionary distribution decisions in favor of a current or contingent beneficiary or any individual whom the beneficiary is then under an obligation to support (if the connected individual is or is related to the beneficiary) unless the connected individual meets the requirements of an individual independent trustee and is not an employee of any corporation, firm, or partnership in which a beneficiary personally holds voting rights, regardless of whether the rights are held in an individual or a fiduciary capacity (or both), that when aggregated with any voting rights held by that trust, are more than one percent of the total voting rights relating to the control of the corporation, firm, or partnership.

The provisions described above thus prohibit any individual beneficiary from participating, directly or indirectly, in discretionary distribution decisions. In addition, the

provisions preclude anyone closely related to a current or contingent beneficiary from participating in discretionary distribution decisions.

Furthermore, under the Trust Company bylaws and participation agreement, the beneficiaries and other family members are all eligible to participate as a director of Trust Company. However, Section 7.17 expressly prohibits any officer or director from participating in a decision of Trust Company involving the exercise of a discretionary power, other than investment powers, of any trust of which the officer, director, or spouse of the officer or director is a current or contingent beneficiary of the trust. In addition, family members are prohibited from participating in Trust Company decisions relating to discretionary distributions from trusts where the current or contingent beneficiary of the trust (or his or her spouse) is a descendant of either Patriarch X or Patriarch Y. Therefore, the beneficiaries of the trusts created under trust agreements are sufficiently prohibited from participating in decisions regarding discretionary distributions from their own trusts. In addition, the structure of the bylaws prohibits the beneficiaries of the Family X and Family Y trusts from participating in Trust Company's exercise of discretion to make distributions from any of either family's trusts preventing the possibility of outside reciprocal agreements that may indirectly give members of Family X effective control over the discretionary distributions from the trusts.

The combination of firewall provisions in the new trust agreements, Trust Technical Provisions, and the Trust Company Bylaws preclude a beneficiary from having the power to affect the beneficial enjoyment of the trust property as contemplated by § 2041. No beneficiary, therefore, will be considered as having the powers of the trustee under § 20.2041-1(b)(1) solely as a result of possessing, directly or indirectly, the power to remove and/or replace either independent trustee under the trust agreements. In addition, although beneficiaries may be shareholders in and participate in the daily activities of Trust Company, they are precluded from participating in discretionary distribution decisions made by Trust Company with respect to trusts created under the trust agreements. Accordingly, based on the facts submitted and the representations made, we conclude that the implementation of the proposed trust restructuring plan, including the appointment of Trust Company as trustee of the trusts and Trust Company's future exercise of discretionary powers over distributions to the beneficiaries of the trusts, will not result in the inclusion of any portion of the trusts in the estate of a beneficiary under § 2041.

Ruling 2

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

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

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that the

PLR-162062-02

transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

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

The trusts created under Trust Agreement are generation-skipping transfer trusts because they provide for distributions to one or more generation of beneficiaries below the grantors' generations. Date 5, Date 6, and Date 7 are prior to September 25, 1985. In the present case, the Series I, Series II, and Series III Trusts are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies to these trusts. Each of these trusts, therefore, are exempt from the generation-skipping transfer tax pursuant to § 26.2601-1(b)(1)(i). The trustee represents that no additions have been made to the trusts since September 25, 1985.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(A) provides, in part, that the distribution of trust principal from an exempt trust to a new trust will not cause the new trust to be subject to the provisions of chapter 13 if (1) the terms of the governing instrument of the exempt trust authorize distributions to the new trust, without the consent or approval of any beneficiary or court; and (2) the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of twenty-one years, plus, if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(D)(1) 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 in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Section 26.2601-1(b)(4)(i)(E) provides examples illustrating the application of paragraph (b)(4). In each example, the trust established in 1980 was irrevocable for purposes of § 26.2601-1(b)(1)(ii) and there have been no additions to any trust after September 25, 1985. Example 1 illustrates a trustee's power to distribute principal authorized under a trust instrument. In 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate twenty-one years after the death of the last child of A to die who was alive at the time Trust was executed. Trust will terminate on the death of A, at which time the remaining principal will be distributed to A's issue, per stirpes. In 2002, the trustee distributes part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate twenty-one years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C, per stirpes. The terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of Trust, extending beyond any life in being at the date of creation of Trust plus a period of twenty-one years, plus if necessary, a reasonable period of gestation. Therefore, the new trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

The present transaction is similar to that in Example 1 of § 26.2601-1(b)(4)(i)(E). With respect to the original trusts, the independent trustee has the discretion to make the proposed distributions in the respective trust agreements. Furthermore, the terms of the new trust agreements will not extend the time for vesting that was provided for in the original trusts because the individuals used as measuring lives for the new trusts were included as measuring lives under the original trust. Therefore, the new trusts will terminate at the same time the original trusts were to terminate. Accordingly, the terms in the new trust agreements do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property in contradiction to § 26.2601-1(b)(4)(A)(2) or § 26.2601-1(b)(1)(v)(B). We therefore conclude that the proposed transaction will not change the status of the trusts as exempt from the generation-skipping transfer tax.

PLR-162062-02

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent your attorney.

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

Sincerely,

James F. Hogan
Acting Branch Chief, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy of this Letter for § 6110 purposes