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Date: October 03, 2001

Legend:

Decedent =
Daughter =

Trust A =

Trust B =

Bank =

A =

B =

C =

Date 1 =

Date 2 =

Court =

State =

State Statute =

Dear _____ :

This responds to a letter from your authorized representative dated November 30, 2000, and subsequent correspondence, requesting rulings regarding the income, gift and generation-skipping transfer (GST) tax consequences of the division and modification of two trusts.

FACTS

The facts submitted and representations made are as follows. Decedent's daughter, Daughter, was born on Date 1. Decedent died on Date 2, prior to September 25, 1985. Trust A and Trust B are testamentary trusts created under the Last Will and Testament of Decedent (Will). Bank and Daughter are co-trustees of Trust A and Trust B. Daughter is an income beneficiary of Trust A and Trust B. Daughter has three children, A, B, and C. A, B, and C are income beneficiaries and contingent remainder beneficiaries of Trust A and Trust B. As of the date of the ruling request, Daughter has no deceased children, A has four living children and no deceased children, B has three living children and no deceased children, and C has no living children and no deceased children.

Relevant Provisions of Trust A:

Article SIXTH of the Will provides that Trust A shall continue in effect for a period of twenty-one years after the death of Daughter.

Article SIXTH states that one-half of the net income of Trust A, or the entire net income of Trust A during any period in which no descendant of Daughter is living, is to be paid to Daughter and that the balance of the net income of Trust A, or the entire net income of Trust A if Daughter is no longer living, is to be divided into as many equal shares as there are children of Daughter who are living at the time of division and children of Daughter who are deceased at the time of division but are then survived by one or more descendants. Article SIXTH directs the Trustees to apportion one share of income to each child of Daughter who is living at the time of division and one share of income to the then living descendant or descendants, "in equal shares per stirpes," of each child of Daughter who is deceased at the time of division. Article SIXTH further states that the income apportioned to a child or more remote descendant of Daughter shall be credited to a separate income account designated with the name of the child or more remote descendant. Article SIXTH further states that the Trustees shall, from time to time, use amounts out of an income account as they deem necessary or prudent for the education, maintenance, support or general welfare of the child or more remote descendant of Daughter with respect to whom the income account was established until the child or descendant has reached 21 years of age, after which time the Trustees are directed to pay over and distribute to the child or descendant, from time to time, such amounts out of his or her income account as he or she may request in writing.

Article SIXTH directs that, when Trust A terminates, twenty-one years after the death of Daughter, if one or more descendants of Daughter are then living, the remaining trust property is to be divided into as many equal shares as there are children of Daughter who are then living and children of Daughter who are deceased but are then survived by one or more descendants. Article SIXTH further provides that the Trustee shall distribute, free from trust, one such share of such remaining trust property to each child of Daughter who is then living and one such share of such remaining trust property to the then living descendants, "in equal portions per stirpes," of each child of Daughter who is then deceased.

Article SIXTH directs that, at Daughter's death, if no descendant of Daughter is then living, or, if at any point during the twenty-one year period after Daughter's death, no descendant of Daughter is living, the remaining trust property is to be distributed to the heirs-at-law of Decedent who are descendants of the mother of Decedent as determined under State law as of the date of execution of the Last Will and Testament of Decedent.

Relevant Provisions of Trust B:

Article SIXTH provides that Trust B shall continue in effect for a period of twenty-one years after the death of the last to survive of Daughter, B, and C.

Article SIXTH states that one-half of the net income of Trust B, or the entire net income of Trust B during any period in which no descendant of Daughter is living, is to be paid to Daughter and that the balance of the net income of Trust B, or the entire net income of Trust B if Daughter is no longer living, is to be divided into as many equal shares as there are children of Daughter who are living at the time of division and children of Daughter who are deceased at the time of division but are then survived by one or more descendants. Article SIXTH directs the Trustees to apportion one share of income to each child of Daughter who is living at the time of division and one share of income to the then living descendant or descendants, "in equal shares per stirpes," of each child of Daughter who is deceased at the time of division. Article SIXTH further states that the income apportioned to a child or more remote descendant of Daughter shall be credited to a separate income account designated with the name of the child or more remote descendant. Article SIXTH further states that the Trustees shall, from time to time, use amounts out of the income account as they deem necessary or prudent for the education, maintenance, support or general welfare of the child or more remote descendant of Daughter with respect to whom the income account was established until the child or descendant has reached 21 years of age, after which time the Trustees are directed to pay over and distribute to the child or descendant, from time to time, such amounts out of his or her income account as he or she may request in writing.

Article SIXTH directs that, when Trust B terminates, twenty-one years after the death of the last to survive of Daughter, B and C, if one or more descendants of Daughter are then living, the remaining trust property is to be divided into as many equal shares as there are children of Daughter who are then living and children of Daughter who are then deceased but are then survived by one or more descendants. Article SIXTH further provides that the Trustee shall distribute, free from trust, one share of the remaining trust property to each child of Daughter who is then living and one share of the remaining trust property to the then living descendants, "in equal portions per stirpes," of each child of Daughter who is then deceased.

Article SIXTH directs that, when Trust B terminates, twenty-one years after the death of the last to survive of Daughter, B, and C, if no descendant of Daughter is then living, the remaining trust property is to be distributed to the heirs-at-law of Decedent who are descendants of the mother of Decedent as determined under State law as of the date of execution of the Last Will and Testament of Decedent.

Proposed Transaction

Daughter and Bank, as Co-Trustees of Trust A and Trust B, propose to divide Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, and Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4. In so dividing Trust A and Trust B, Daughter and Bank, as Co-Trustees, will be exercising their power, under State Statute "[t]o divide any trust, before or after its initial funding, into one or more separate trusts," Trust A-1, Trust A-2, Trust A-3, Trust A-4, Trust

B-1, Trust B-2, Trust B-3 and Trust B-4 may be referred to collectively as the "separate trusts."

Upon the division of Trust A, Trust A-1 will consist of a one-half share of what now comprises Trust A, and Trust A-2, Trust A-3, and Trust A-4 will each consist of a one-sixth share of what now comprises Trust A. Upon the division of Trust B, Trust B-1 will consist of a one-half share of what now comprises Trust B, and Trust B-2, Trust B-3, and Trust B-4 will each consist of a one-sixth share of what now comprises Trust B.

The division of Trust A into Trusts A-1, A-2, A-3, and A-4 and the division of Trust B into Trusts B-1, B-2, B-3, and B-4 will be made on a ratable basis. Each and every asset that is evenly divisible by six will be allocated ratably among Trusts A-1, A-2, A-3, and A-4 or among Trusts B-1, B-2, B-3, and B-4, as the case may be. Each and every asset that is not evenly divisible by six will be sold, and the proceeds of the sale will be allocated ratably among Trusts A-1, A-2, A-3, and A-4, or among Trusts B-1, B-2, B-3, and B-4, as the case may be.

Immediately following the division of Trust A, the provisions that will govern the administration of Trusts A-1, A-2, A-3, and A-4 will be exactly the same as the provisions that currently govern the administration of Trust A. Immediately following the division of Trust B, the provisions that will govern the administration of Trusts B-1, B-2, B-3, and B-4 will be exactly the same as the provisions that currently govern the administration of Trust B.

After the division of Trust A and Trust B, as outlined above, Daughter proposes to petition Court to vary the terms of each of the separate trusts created by the division. Specifically, Daughter plans to ask the Court to vary the terms of the separate trusts as follows:

1. Trust A-1 to: (a) eliminate all current and contingent income interests in Trust A-1, other than the current income interest of Daughter, so that Daughter will be the sole income beneficiary of Trust A-1 for the rest of her life; and (b) cause all remaining principal of Trust A-1, along with all accrued and undistributed income, at Daughter's death, to be distributed to Daughter's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is or is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter.

2. Trust A-2, to: (a) eliminate all current and contingent income interests in Trust A-2, other than the current income interest of A, so that A will be the sole income beneficiary of Trust A-2 until A dies or until Trust A-2 earlier terminates by reason of the expiration of twenty-one years after the death of Daughter; (b) cause all remaining principal of Trust A-2, along with all accrued and undistributed income, at the expiration of twenty-one years after the death of Daughter, if A is then living, to be distributed to A;

and (c) cause all remaining principal of Trust A-2, along with all accrued and undistributed income, at A's death if A dies before, or within twenty-one years after, the death of Daughter, to be distributed to A's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter.

3. Trust A-3, to: (a) eliminate all current and contingent income interests in Trust A-3, other than the current income interest of B, so that B will be the sole income beneficiary of Trust A-3 until B dies or until Trust A-3 earlier terminates by reason of the expiration of twenty-one years after the death of Daughter; (b) cause all remaining principal of Trust A-3, along with all accrued and undistributed income, at the expiration of twenty-one years after the death of Daughter, if B is then living, to be distributed to B; and (c) cause all remaining principal of Trust A-3, along with all accrued and undistributed income, at B's death if B dies before, or within twenty-one years after, the death of Daughter, to be distributed to B's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter.

4. Trust A-4, to: (a) eliminate all current and contingent income interests in Trust A-4, other than the current income interest of C, so that C will be the sole income beneficiary of Trust A-4 until C dies or until Trust A-4 earlier terminates by reason of the expiration of twenty-one years after the death of Daughter; (b) cause all remaining principal of Trust A-4, along with all accrued and undistributed income, at the expiration of twenty-one years after the death of Daughter, if C is then living, to be distributed to C; and (c) cause all remaining principal of Trust A-4, along with all accrued and undistributed income, at C's death if C dies before, or within twenty-one years after, the death of Daughter, to be distributed to C's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter.

5. Trust B-1 to: (a) eliminate all current and contingent income interests in Trust B-1, other than the current income interest of Daughter, so that Daughter will be the sole income beneficiary of Trust B-1 for the rest of her life; and (b) cause all remaining principal of Trust B-1, along with all accrued and undistributed income, at Daughter's death, to be distributed to Daughter's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is or is

to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter, B, and C.

6. Trust B-2, to: (a) eliminate all current and contingent income interests in Trust B-2, other than the current income interest of A, so that A will be the sole income beneficiary of Trust B-2 until A dies or until Trust B-2 earlier terminates by reason of the expiration of twenty-one years after the death of Daughter, B, and C; (b) cause all remaining principal of Trust B-2, along with all accrued and undistributed income, at the expiration of twenty-one years after the death of Daughter, B, and C, if A is then living, to be distributed to A; and (c) cause all remaining principal of Trust B-2, along with all accrued and undistributed income, at A's death if A dies before, or within twenty-one years after, the death of Daughter, B, and C, to be distributed to A's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter, B, and C.

7. Trust B-3, to: (a) eliminate all current and contingent income interests in Trust B-3, other than the current income interest of B, so that B will be the sole income beneficiary of Trust B-3 until B dies; and (b) cause all remaining principal of Trust B-3, along with all accrued and undistributed income, at B's death to be distributed to B's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter, B, and C.

8. Trust B-4, to: (a) eliminate all current and contingent income interests in Trust B-4, other than the current income interest of C, so that C will be the sole income beneficiary of Trust B-4 until C dies; and (b) cause all remaining principal of Trust B-4, along with all accrued and undistributed income, at C's death to be distributed to C's then living descendants, per stirpes, subject to provisions requiring that the distributive share of each descendant be distributed to the Trustee or Trustees of a separate trust under the Will to which the descendant is to be the sole income beneficiary until the descendant dies or until the separate trust earlier terminates by reason of the expiration of twenty-one years after the death of Daughter, B, and C.

After the division of Trust A and Trust B, and after the Court has varied the terms of the separate trusts, as outlined above, both Daughter and Bank plan to resign as Co-Trustees of each of the separate trusts, except Trusts A-1 and B-1. It is represented that, as permitted under State law, the then sole income beneficiary of each trust (other than Trusts A-1 and B-1) will designate herself or himself and Bank as Co-Trustees of the respective trusts.

You have requested the following rulings:

1. That the proposed division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the proposed ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3 and Trust A-4 and the proposed variation of the terms of such separate trust by the Court will not cause the GST tax imposed by § 2601 of the Internal Revenue Code to apply to such separate trusts, or to any future distributions from, or the termination of, such separate trusts;

2. That the proposed division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the proposed ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3 and Trust B-4 and the proposed variation of the terms of such separate trust by the Court will not cause the GST tax imposed by § 2601 to apply to such separate trusts, or to any future distributions from, or the termination of, such separate trusts;

3. That the proposed resignation of Daughter and Bank as co-trustees of Trust A-2, Trust A-3, and Trust A-4, and the proposed appointment by the sole beneficiary of Trust A-2, Trust A-3, and Trust A-4, as the case may be, of replacement co-trustees of each such trust relate to the administration of such trusts and will not cause the GST tax imposed by § 2601 to apply to such trusts, or to any future distributions from, or the termination of, such trusts;

4. That the proposed resignation of Daughter and Bank as co-trustees of Trust B-2, Trust B-3, and Trust B-4, and the proposed appointment by the sole beneficiary of Trust B-2, Trust B-3, and Trust B-4, as the case may be, of replacement co-trustees of each such trust relate to the administration of such trusts and will not cause the GST tax imposed by § 2601 to apply to such trusts, or to any future distributions from, or the termination of, such trusts;

5. That the proposed division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the proposed ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4 and the proposed variation of the terms of such separate trusts by the Court will not constitute a transfer by any beneficiary that will be subject to gift tax under § 2501;

6. That the proposed division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the proposed ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4 and the proposed variation of the terms of such separate trusts by the Court will not constitute a transfer by any beneficiary that will be subject to gift tax under § 2501;

7. That the proposed division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the proposed ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4, and the proposed variation of the

terms of the separate trusts by the Court, will not be treated as a sale or disposition that would require any trust or any beneficiary to recognize gain or loss under § 1001;

8. That the proposed division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the proposed ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4, and the proposed variation of the terms of the separate trusts by the Court, will not be treated as a sale or disposition that would require any trust or any beneficiary to recognize gain or loss under § 1001;

9. That, after the division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4, and the variation of the terms of the separate trusts by the Court, the assets of Trust A-1, Trust A-2, Trust A-3, and Trust A-4 will have the same basis and the same holding periods as the assets had when they comprised Trust A;

10. That, after the division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4, and the variation of the terms of the separate trusts by the Court, the assets of Trust B-1, Trust B-2, Trust B-3, and Trust B-4 will have the same basis and the same holding periods as the assets had when they comprised Trust B;

11. That, after the division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4 and the variation of the terms of such separate trust by the Court, Trust A-1, Trust A-2, Trust A-3, and trust A-4 will each be treated as a separate taxpayer under § 643(f); and

12. That, after the division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4 and the variation of the terms of such separate trust by the Court, Trust B-1, Trust B-2, Trust B-3, and Trust B-4 will each be treated as a separate taxpayer under § 643(f).

LAW AND ANALYSIS

Generation-Skipping Transfer Tax Ruling Requests Nos. 1, 2, 3, and 4

Section 2601 imposes a tax on each generation-skipping transfer made by a transfer to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a

transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under §§ 2038 or 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer.

In the present case, Trust A and Trust B were irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, have been made to the trusts after that date. Trust A will be divided into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4. Trust B will be divided into four separate trust, Trust B-1, Trust B-2, Trust B-3, and Trust B-4. Each separate trust will be subject to its original terms as set forth in Article SIXTH of Decedent's Will, as modified by Court.

Section 26.2601-1(b)(4)(i) discusses certain actions taken with respect to a trust which will not cause a trust to lose its exempt status. Under § 26.2601-1(b)(4)(i)(D), a modification will not cause an exempt trust to lose its exempt status, if the modification does not shift a beneficial interest in the trust to any beneficiary in a generation lower than the persons who held the beneficial interests prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification that does not cause an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer will not cause the trust to lose its exempt status.

In this case, the proposed division of Trust A and Trust B and the proposed modifications will not result in a shift of any beneficial interest to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the proposed division and the modifications. Further, the proposed division of Trust A and Trust B and the proposed modifications will not extend the time for vesting of any beneficial interest beyond the period provided for in Article SIXTH of Decedent's Will.

Therefore, based on the facts submitted and representations made, we conclude:

That the proposed division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the proposed ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3 and Trust A-4 and the proposed variation of the terms of such separate trust by the Court will not cause the GST tax imposed by § 2601 to apply to such separate trusts, or to any future distributions from, or the termination of, such separate trusts;

That the proposed division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the proposed ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3 and Trust B-4 and the proposed variation of the terms of such separate trust by the Court will not cause the GST tax imposed by § 2601 to apply to such separate trusts, or to any future distributions from, or the termination of, such separate trusts;

That the proposed resignation of Daughter and Bank as co-trustees of Trust A-2, Trust A-3, and Trust A-4, and the proposed appointment by the sole beneficiary of Trust A-2, Trust A-3, and Trust A-4, as the case may be, of replacement co-trustees of each such trust relate to the administration of such trusts and will not cause the GST tax imposed by § 2601 to apply to such trusts, or to any future distributions from, or the termination of, such trusts; and

That the proposed resignation of Daughter and Bank as co-trustees of Trust B-2, Trust B-3, and Trust B-4, and the proposed appointment by the sole beneficiary of Trust B-2, Trust B-3, and Trust B-4, as the case may be, of replacement co-trustees of each such trust relate to the administration of such trusts and will not cause the GST tax imposed by § 2601 to apply to such trusts, or to any future distributions from, or the termination of, such trusts.

Gift Tax Ruling Requests No. 5 and 6

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

In this case, the interest of each beneficiary will remain the same after the proposed division. Accordingly, based on the facts submitted and the representations made, we conclude as follows:

That the proposed division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the proposed ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4 and the proposed

variation of the terms of such separate trusts by the Court will not constitute a transfer by any beneficiary that will be subject to gift tax under § 2501; and,

That the proposed division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the proposed ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4 and the proposed variation of the terms of such separate trusts by the Court will not constitute a transfer by any beneficiary that will be subject to gift tax under § 2501.

Income Tax Ruling Requests Nos. 7, 8, 9, and 10

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.

A partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56-437, 1956-2 C.B. 507.

In Rev. Rul. 69-486, 1969-2 C.B. 159, distinguished by, Rev. Rul. 83-61, 1983-1 C.B. 78, a non-pro rata distribution of trust property was made in kind by the trustee, although the trust instrument and local law did not convey authority to the trustee to do so. The distribution was effected as a result of a mutual agreement between the trustee and the beneficiaries. Because neither the trust instrument nor local law conveyed authority to the trustee to make a non-pro rata distribution, Rev. Rul. 69-486 holds that the transaction was equivalent to a pro rata distribution followed by an exchange between the beneficiaries and was subject to the provisions of § 1001 and § 1002.

The present case is distinguishable from Rev. Rul. 69-486 because the assets of Trust A will be allocated pro rata among Trusts A-1, A-2, A-3, and A-4. Similarly, the assets of Trust B will be allocated pro rata among Trusts B-1, B-2, B-3, and B-4. Accordingly, the proposed transaction will not be treated as a pro rata distribution followed by an exchange of assets among the beneficiaries of Trust A or Trust B.

Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991) concerns the issue of when a sale or exchange has taken place that results in realization of gain or loss under § 1001. In Cottage Savings, a financial institution exchanged its interests in one group of residential mortgage loans for another lender's interests in a different group of residential mortgage loans. The two groups of mortgages were considered "substantially identical" by the agency that regulated the financial institution.

The Supreme Court in Cottage Savings, 499 U.S. at 560-61, concluded that § 1.1001-1 reasonably interprets § 1001(a) and stated that an exchange of property gives rise to a realization event under § 1001(a) if the properties exchanged are "materially different."

In defining what constitutes a "material difference" for purposes of § 1001(a), the Court stated that properties are "different" in the sense that is "material" to the Code if their respective possessors enjoy legal entitlements that are different in kind or extent. Cottage Savings, 499 U.S. at 564-65. The Court held that mortgage loans made to different obligors and secured by different homes embodied distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans.

It is consistent with the Supreme Court's opinion in Cottage Savings to find that the interests of the beneficiaries of Trusts A-1, A-2, A-3, and A-4 will not differ materially from their interests in Trust A, and that the interests of the beneficiaries of Trusts B-1, B-2, B-3, and B-4 will not differ materially from their interests in Trust B. The assets of Trust A will be allocated among Trusts A-1, A-2, A-3, and A-4 in proportion to the current interests of the beneficiaries, and the beneficiaries will be entitled to the same benefits after the proposed transaction as before. Similarly, the assets of Trust B will be allocated among Trusts B-1, B-2, B-3, and B-4 in proportion to the current interests of the beneficiaries, and the beneficiaries will be entitled to the same benefits after the proposed transaction as before.

Trusts A-2, A-3, and A-4 will differ from Trust A, and Trusts B-2, B-3, and B-4 will differ from Trust B, in that the income will be paid to the income beneficiaries who have reached age 21 instead of to an income account. However, this is not a material difference because Trust A and Trust B provide that adult income beneficiaries can receive payments from the income accounts on request. Income for income beneficiaries that have not yet reached age 21 will be paid to the income beneficiary in the same manner as is now provided in Trust A and Trust B.

Section 1015 provides that the basis in property acquired by a transfer in trust is the same as it would be in the hands of the grantor, with adjustments for gain and loss recognized.

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which the property was held by any other person, if under Chapter 1 of the Code the property has, for the purposes of determining gain or loss from a sale or exchange, the same basis in

whole or in part in the taxpayer's hands as it would have in the hands of the other person.

Accordingly, based on the facts submitted and the representations made, we conclude:

The proposed division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the proposed ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4, and the proposed variation of the terms of the separate trusts by the Court, will not be treated as a sale or disposition that would require any trust or any beneficiary to recognize gain or loss under § 1001.

The proposed division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the proposed ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4, and the proposed variation of the terms of the separate trusts by the Court, will not be treated as a sale or disposition that would require any trust or any beneficiary to recognize gain or loss under § 1001.

The basis of each trust asset in the hands of each of Trusts A-1, A-2, A-3, and A-4 will be the same as the basis of each asset in Trust A. Therefore, we conclude that after the division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and Trust A-4, the ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4 and the variation of the terms of the separate trusts by the Court, the assets of Trust A-1, Trust A-2, Trust A-3, and Trust A-4, will have the same holding periods as the assets had when they comprised Trust A.

The basis of each trust asset in the hands of each of Trusts B-1, B-2, B-3, and B-4 will be the same as the basis of each asset in Trust B. Therefore, we conclude that after the division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and Trust B-4, the ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4, and the variation of the terms of the separate trusts by the Court, the assets of Trust B-1, Trust B-2, Trust B-3, and Trust B-4 will have the same holding periods as the assets had when they comprised Trust B.

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Section 643(f) provides that, under regulations to be prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of federal income tax.

While Trusts A-1, A-2, A-3, and A-4 will have the same grantor, they will have different primary beneficiaries. Moreover, while Trusts B-1, B-2, B-3, and B-4 will have the same grantor, they will have different primary beneficiaries.

Therefore, based on the facts submitted and the representations made, we conclude:

That, after the division of Trust A into four separate trusts, Trust A-1, Trust A-2, Trust A-3, and trust A-4, the ratable allocation of Trust A's assets among Trust A-1, Trust A-2, Trust A-3, and Trust A-4 and the variation of the terms of such separate trust by the Court, Trust A-1, Trust A-2, Trust A-3, and trust A-4 will each be treated as a separate taxpayer under § 643(f); and

That, after the division of Trust B into four separate trusts, Trust B-1, Trust B-2, Trust B-3, and trust B-4, the ratable allocation of Trust B's assets among Trust B-1, Trust B-2, Trust B-3, and Trust B-4 and the variation of the terms of such separate trust by the Court, Trust B-1, Trust B-2, Trust B-3, and Trust B-4 will each be treated as a separate taxpayer under § 643(f).

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. This ruling is conditioned on the assumption that Daughter, born on Date 1, will not have additional children.

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

Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized agent.

Sincerely yours,
By Lorraine E. Gardner
Acting Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes