**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR–118678-01

Date:
September 13, 2001

Re:

Legend:

Decedent =

Trust =

Child 1 =
Child 2 =

Date 1 =
Date 2 =

R1 =

Code =

State =

Dear :

This is in response to your letter dated August 20**,** 2001 and prior correspondence submitted in which you requested rulings on behalf of Child 1, Child 2, and R1 concerning the application of §§ 2514, 2041, and 2501 of the Internal Revenue Code.

The facts are represented to be as follows: Decedent established an irrevocable trust on Date 1 for his grandchildren and the issue of his grandchildren. Decedent's spouse is deceased. Child 1 and Child 2 are the only children of Decedent. Child 1 and Child 2 have no children. There are no grandchildren who are permissible income or remainder beneficiaries of Trust. Child 2 was named sole trustee and is presently serving as trustee (Trustee). Child 1 and Child 2 have joint powers to close the class of Decedent's grandchildren. Therefore, Child 1 and Child 2 have a joint interest in Trust if they declare the class of Decedent's grandchildren closed. R1 is a cousin of Child 1 and Child 2 and has a contingent interest in Trust if R1survives both Child 1 and Child 2 and if both Child 1 and Child 2 die without issue. R1 was unaware that Trust existed or that he had any interest of any nature in Trust prior to Date 2

Section 1.1 of Trust provides that until the class of grandchildren of Decedent is closed, there is to be a source trust that consists of: (i) the principal conveyed to Trustee on the date of the execution of Trust, and any additions to principal to be held in Trust (and not designated for a particular grandchild trust); (ii) income of the source trust for the current period held pending distribution; and (iii) in general all assets held in Trust which at the time are not presumptively destined for a particular grandchild or family of the grandchild.

Section 1.2 of Trust provides that a separate grandchild trust is to be established for each of the children of Child 1 and Child 2 now living or later born (excepting any grandchild after reaching age 30). In general, each separate trust is to hold that part of Trust property which is presumptively destined for a particular grandchild or family of the grandchild.

Section 1.3 of Trust provides that, in general, a part of the income from the source trust is to be distributed among the grandchild trusts, and portions of the principal of the source trust is to be distributed to one or more of the grandchild trusts (or to the grandchildren or issue). In general, the income and principal distributed to or otherwise received by a grandchild trust is to be accumulated for or distributed to the grandchild and his family as Trustee determines, and ultimately the grandchild trust is to terminate in favor of the grandchild, if living, or to the grandchild's issue, if the grandchild is deceased.

Section 2.1 of Trust provides that at the end of each accounting period, the net income of the source trust for the period is to be divided into equal shares which will number one more than the number of grandchild trusts then in existence; one share is to be distributed to each grandchild trust and one share is to be retained in the source trust and added to principal.

Section 2.2 of Trust provides that if, at the end of any accounting period, there are no grandchild trusts in existence, and if there are any grandchildren of Decedent then over age 30 or then deceased leaving issue then surviving, the grandchild trust for the grandchild or the deceased grandchild having terminated, the net income of the source trust for the period is to be distributed in equal shares to the grandchildren and the issue of any deceased grandchildren to take by right of representation, and if there is no grandchild or grandchild's issue to receive the income then such income is to be accumulated in the source trust and added to the principal.

Section 2.3 of Trust provides that whenever a grandchild of Decedent reaches age 30, a fraction of the source trust (principal and net income accrued to date) is to be distributed to the grandchild trust for the grandchild then reaching age 30. The numerator of the fraction is one, and the denominator of the fraction is the number of grandchild trusts in existence immediately prior to the child reaching age 30.

Section 2.4 of Trust provides that unless the source trust is sooner terminated by a complete distribution of principal under Section 2.3, the source trust is to terminate upon the death of the last survivor of Child 1 and Child 2. Further, if Child 1 and Child 2, or one of them as are living at the time is to certify to Trustee that the class of grandchildren of Decedent is to be considered closed, the source trust is to terminate. On any termination, the assets of the source trust are to be distributed in equal shares to the grandchild trusts if any; and if there are no grandchild trusts at this time, the assets of the source trust are to be distributed to the grandchildren of Decedent (in equal per capita shares as to the grandchildren) and the issue of any deceased grandchildren (by right of representation as to the issue); and if there are no grandchildren or issue, the assets of the source trust are to be distributed to the heirs of

Decedent in the proportion then fixed by State law governing the descent and distribution of personal property.

Section 2103 of State Code provides, in part, that any part of the intestate estate that does not pass to the decedent's surviving spouse, or the entire intestate estate if there is no surviving spouse, passes first to individuals who survive the decedent who are the decedent's descendants by representation.

Child 1 and Child 2 propose to jointly release their power to declare the class of Decedent's grandchildren closed. R1 proposes to execute a disclaimer in which he will irrevocably disclaim any and all of his interests in Trust. It is represented that RI will execute the disclaimer within 9 months from Date 2.

Child 1, Child 2, and R1 request the following rulings:

1. Child 1's and Child 2's power to jointly declare the class of Decedent's grandchildren closed is not a general power of appointment under §§ 2514 and 2041.

2. Upon the death of the first to die of Child 1 and Child 2 and upon the death of the survivor of them, no part of the assets of Trust will be includible in either of their estates under § 2041.

3. Child 1's and Child 2's simultaneous release of the power to jointly declare the class of Decedent's grandchildren closed will not constitute a taxable gift under § 2501 by either Child 1 or Child 2.

4. If R1 disclaims his interest in Trust within 9 months of Date 2, the disclaimer will be considered to be made within a reasonable time after R1 obtained knowledge of the existence of the transfer and his interest in Trust and the disclaimer will not constitute a taxable gift under § 2501.

Ruling Request 1 and 2

Under § 2041(b)(1), the term "general power of appointment" is defined, in relevant part, to mean a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 2041(b)(1)(C)(ii) provides, however, that in the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person, if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property subject to the power, which is adverse to the exercise of the power in favor of the decedent -- such power shall not be deemed a general power of appointment. For purposes of § 2041(b)(1)(C)(ii), a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

Section 20.2041-3(c)(2) of the Estate Tax Regulations states in part that a coholder of a power of appointment has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a coholder

of a power is considered as having an adverse interest where he may possess the power after the decedent's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y.

Under § 2514(c), the term "general power of appointment" is defined, in relevant part, to mean a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate.

The gift tax provisions of § 2514(c)(3)(B) are substantially similar to the estate tax provisions of § 2041(b)(1)(C)(ii).

Similarly, the provisions of § 25.2514-3(b)(2) of the Gift Tax Regulations are substantially the same as those contained in § 20.2041-3(c)(2).

In this case, Child 1 and Child 2 propose to jointly release their power to declare the class of Decedent’s grandchildren closed. Neither Child 1 nor Child 2 can exercise the jointly held power alone and they are considered as having adverse interests because (assuming Child 1 dies first) Child 2 is a person who, after the death of Child 1, will be possessed of a power of appointment (with respect to the property subject to Child 1's power) which Child 2 may exercise in favor of himself, his estate, his creditors, or the creditors of his estate. Therefore, we conclude that each party in this case has an interest that is adverse to the exercise of the power in favor of the other party, within the meaning of §§ 2041(b)(1)(C)(ii) and 2514(c)(3)(B). Consequently, Child 1's and Child 2's power to jointly declare the class of Decedent’s grandchildren closed during their lifetimes is not a general power of appointment under §§ 2514 and 2041. Furthermore, if Child 1 and Child 2 jointly release their power to declare the class of Decedent’s grandchildren closed, then upon the death of the first to die of Child 1 and Child 2 and upon the death of the survivor of them, no part of the assets of Trust will be includible in either of their estates under § 2041.

Ruling Request 3 and 4

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual.

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

Under § 2514(c), the term "general power of appointment" is defined, in relevant part, to mean a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate.

Section 2511 provides that the tax imposed by § 2501 shall apply 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 25.2511-1(c)(2) of the Gift Tax Regulations provides that in the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of the property transferred from a decedent, a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transferor. The refusal must be unequivocal and effective under the local law.

The Supreme Court has recognized that, under the predecessor to this regulation, an interest must be disclaimed within a reasonable time after obtaining knowledge of the transfer creating the interest to be disclaimed rather than within a reasonable time after the distribution or vesting of the interest. Jewett v. Commissioner, 455 U.S. 305 (1982).

Based on the information submitted and the representations made, we conclude that since the power in question is not a general power of appointment, the release of that power by Child 1 and Child 2 will not constitute a taxable gift under § 2501. We also conclude that if R1's disclaimer is made within 9 months of Date 2, the disclaimer will be considered to be made within a reasonable time after R1 obtained knowledge of the existence of the transfer and his interest in Trust. Accordingly, provided that R1's disclaimer is valid under State law and assuming the other requirements of § 25.2511-1(c)(2) are met, R1's disclaimer will not constitute a gift under § 2501.

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 the rulings, it is subject to verification on examination.

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.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Trustee, Child 1, Child 2, and R1.

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

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

Enclosure
Copy for section 6110 purposes