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Legend

Date =

Husband =

Wife =

Trust =

State 1 =

State 2 =

Investment Trust =

Child 1 =

Child 2 =

Child 3 =

Child 4 =

Trustee =

Power of Appointment Committee =

Individual 1 =

Individual 2 =

State 2 Statute: =

Dear :

This responds to a letter dated January 28, 2015, and subsequent correspondence, requesting rulings under the Internal Revenue Code.

Facts

The information and representations submitted are as follows. On Date, Husband and Wife ("Grantors") created Trust, an irrevocable trust. Trust is sited in State 1 and, pursuant to the Trust agreement, is governed by the laws of State 1. A corporate trustee (Trustee) is the sole trustee of Trust. Grantors reside in State 2, a community property state.

Grantors will transfer property to Trust. The Trust agreement defines "Beneficiaries" as the class consisting of the Grantors' issue and Investment Trust. The Grantors' issue is defined as the Grantors' Children and the issue of the Grantors' Children. The Grantors' Children are defined as Child 1, Child 2, Child 3, and Child 4. Investment Trust is an irrevocable trust created by Husband and Individual 1, as grantors, and governed under the laws of State 2. The beneficiaries of Investment Trust are the issue of Husband and Individual 1.

Part I, Article Second (a) of Trust provides that until the death of the first to die of Grantors (the Predeceased Spouse), at any time or times, the Trustee shall distribute to the Beneficiaries, the spouses of the Grantors' Issue, and/or to either or both of the Grantors such amounts of the net income or principal, including the whole thereof, as the Power of Appointment Committee ("Committee") appoints. (The current members of the Committee are Child 1, Child 2, Child 3, Child 4, and Investment Trust, by its

trustee, Individual 2.) From and after the death of the Predeceased Spouse and until the death of the Surviving Spouse, at any time or times, the Trustee shall distribute to the Beneficiaries, the spouses of the Grantors' Issue, and to the Surviving Spouse such amounts of the net income or principal, including the whole thereof, as the Committee appoints. While the Committee is in existence, the Trustee shall make no distributions except as the Committee appoints.

If and only if the Committee ceases to exist, then, until the Distribution Date, the Disinterested Trustee may, pursuant to a written instrument, at any time or times, distribute to the Beneficiaries such amounts of the net income or principal, including the whole thereof, as the Disinterested Trustee determines in its sole and unfettered discretion. The Distribution Date is the date of the Survivor's death. If and only if the Committee ceases to exist, then, until the death of the Predeceased Spouse, at any time or times, the Disinterested Trustee may distribute to either or both of the Grantors such amounts of the net income or principal, including the whole thereof, as the Disinterested Trustee determines in its sole and unfettered discretion. If and only if the Committee ceases to exist, then, from and after the death of the Predeceased Spouse and until the death of the Surviving Spouse, at any time or times, the Disinterested Trustee may distribute to the Surviving Spouse such amounts of the net income or principal, including the whole thereof, as the Disinterested Trustee determines in its sole and unfettered discretion.

Part I, Article Second (b) provides that each of the Grantors have the power in a non-fiduciary capacity, at any time and from time to time, to appoint to any one or more of the Grantors' Issue such amounts of the principal, including the whole thereof, as such Grantor deems advisable to provide for the health, maintenance, support and education of the Grantors' Issue (Grantor's Sole Power).

Under Part II, Article Eleventh, any appointment, direction, determination or action by the Committee must be made, given or taken in a writing either (1) executed by either of the Grantors or the survivor of them and by a majority of the other members of the Committee (Grantor's Consent Power) or (2) executed by all then serving members of the Committee other than the Grantors (Unanimous Member Power). The members of the Committee serve and act in a non-fiduciary capacity. At any time the Committee consists of two or more members other than Grantors, then all the members of the Committee including the Grantors may by unanimous vote add one or more members to the Committee provided that such members are Beneficiaries. If at any time the Committee is reduced to one member other than the Grantors, the Committee shall immediately cease to exist. In all events, the Committee shall cease to exist upon the Surviving Spouse's death. Any net income not distributed by Trustee will be accumulated and added to principal.

Part I, Article Second (e) provides that upon the death of the Predeceased Spouse, the Predeceased Spouse's entire interest in the property in Trust shall be distributed to

such person or persons or entity or entities, other than the Predeceased Spouse, the Predeceased Spouse's estate, the creditors of the Predeceased Spouse or the creditors of the estate of the Predeceased Spouse, as the Predeceased Spouse may appoint by will (Predeceased Grantor's Testamentary Power).

Part I, Article Second (f) provides that upon the death of the Predeceased Spouse, the balance of the Predeceased Spouse's remaining interest in the property in Trust which the Predeceased Spouse has not effectively appointed by will (Predeceased Spouse Balance) shall be distributed as follows: ten percent to Investment Trust, and the balance in further trust to Grantors' then living issue, per stirpes. The portion of the property remaining after the distribution of the Predeceased Spouse Balance shall continue to be held and administered pursuant to the provisions of Trust.

Part I, Article Second (h) provides that upon the death of the Surviving Spouse, the then remaining balance of Trust shall be distributed to such person or persons or entity or entities, other than the Surviving Spouse, the Surviving Spouse's estate, the creditors of the Surviving Spouse or the creditors of the estate of the Surviving Spouse, as the Surviving Spouse may appoint by will (Surviving Grantor's Testamentary Power). Upon the death of the Surviving Spouse, the balance of the Surviving Spouse's remaining interest in the property in Trust which the Surviving Spouse has not effectively appointed by will shall be distributed as follows: ten percent to Investment Trust and the balance in further trust to Grantors' then living issue, per stirpes.

Part II, Article Seventh (a) provides that the Grantors are married to one another; the transferred property described in Schedule A of Trust is community property, and the Grantors may hereafter, either singly or jointly, transfer to the Trustee other property which either is community property or is being transmuted into community property. Each of the Grantors affirmatively and expressly intends that any and all property transferred to the Trustee prior to the death of the Predeceased Spouse is and shall retain its character as community property.

Part II, Article Seventh (c) provides that any distribution pursuant to the terms of Trust to either of them prior to the death of the Predeceased Spouse is and shall be a distribution of community property. Part II, Article Seventh (d) provides that all distributions of the net income or principal prior to the death of the Predeceased Spouse, whether made by the Committee, the Disinterested Trustee or a Grantor's exercise of the powers retained by such Grantor, to a beneficiary is and shall be a distribution out of community property.

Part II, Article Seventh (e) provides that with respect to the power of appointment retained by the Grantors, prior to the death of the Predeceased Spouse, any such appointment by a Grantor of the principal shall be funded equally from each Grantor's share of community property held in Trust. Each Grantor consents to all such distributions by the other Grantor. Part II, Article Seventh (f) provides that each of the

Grantors affirmatively agrees and confirms that, upon any distribution, other than to one of the Grantors, such property shall be funded equally from each Grantor's share of community property held in Trust and such property shall automatically and irrevocably be transmuted and shall cease to be community property. Furthermore, each of the Grantors assigns, transfers, waives and releases irrevocably any community property interest to which he or she may hereafter become entitled to with respect to such distribution and consents to all such distributions by the Committee pursuant to Part II, Article Eleventh.

Part II, Article Fifth (a) provides that it is the Grantors' intention that no transfer by either of the Grantors to any trust created hereunder shall be a completed gift, and it is also the Grantors' intention that during any period of time in which the Committee is in existence, but only during any such period, neither of the Grantors shall be treated as the owner of any portion of any trust created hereunder under §§ 671 through 679 of the Internal Revenue Code (Code).

State 2 Statute provides that all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in State 2 is community property.

You requested the following rulings:

1. As long as the Power of Appointment Committee is serving, no portion of the items of income, deductions, and credits against tax of Trust shall be included in computing under § 671 the taxable income, deductions, and credits of Husband, Wife, or any members of the Committee;

2. The contribution of property to Trust by Husband and Wife will not be a completed gift subject to federal gift tax;

3. Any distribution of property by the Committee from Trust to Husband or Wife will not be a completed gift, subject to federal gift tax, by any member of the Committee;

4. Any distribution of property by the Committee, other than Husband and Wife, from Trust to any beneficiary of Trust, other than Husband or Wife, will not be a completed gift subject to federal gift tax, by any member of the Committee;

5. No member of the Committee, other than Husband and Wife, upon his or her death will include in his or her estate any property held in Trust because such member is deemed to have a general power of appointment within the meaning of § 2041 over property held in Trust; and

6. The basis of all community property in Trust on the date of death of the Predeceased Spouse will receive an adjustment in basis to the fair market value of such property at the date of death of the Predeceased Spouse assuming that the Committee is in existence at the time of the death of the Predeceased Spouse, such that Trust is not a grantor trust as to either grantor.

Law and Analysis

Ruling 1

Section 671 provides that where it is specified in subpart E of part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 672(a) provides, for purposes of subpart E, the term "adverse party" means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust.

Sections 673 through 677 specify the circumstances under which the grantor is treated as the owner of a portion of a trust.

Section 673(a) provides that the grantor shall be treated as the owner of any portion of a trust in which the grantor has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds five (5) percent of the value of such portion.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b) provides that § 674(a) shall not apply to the powers described in § 674(b) regardless of whom held.

Section 674(b)(3) provides that § 674(a) shall not apply to a power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in

the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b)(5) provides that § 674(a) shall not apply to a power to distribute corpus to or for a beneficiary, provided that the power is limited by a reasonably definite standard.

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if, under the terms of the trust agreement or circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiary of the trust.

Section 676(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of part I, subchapter J, chapter 1, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Section 677(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Section 678(a) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671-677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Based solely on the facts and representations submitted, we conclude an examination of Trust reveals none of the circumstances that would cause Husband or Wife to be treated as the owner of any portion of Trust under §§ 673, 674, 676, or 677 as long as the Committee remains in existence. Because none of the members of Committee has a power exercisable by himself to vest trust income or corpus in himself, none shall be treated as the owner of Trust under § 678(a).

We further conclude that an examination of Trust reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of Husband or Wife under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Husband or Wife will be treated as the owner of any portion of Trust under § 675. This is a question of fact, the determination of which

must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.

Rulings 2 and 3

Section 2501(a)(1) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident. Section 2511(a) 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 25.2511-2(b) of the Gift Tax Regulations provides that a gift is complete as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in the donor no power to change its disposition, whether for the donor's own benefit or for the benefit of another. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

Section 25.2511-2(b) also provides an example where the donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among the donor's descendants. The regulation concludes that no portion of the transfer is a completed gift. However, if the donor had not retained a testamentary power of appointment, but instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift.

Section 25.2511-2(c) provides that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title in himself or herself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 25.2511-2(e) provides that a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom.

Section 25.2511-2(f) provides that the relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by death of the donor, is regarded as the event which completes the gift and causes the gift tax to apply.

Section 25.2511-2(g) provides that if a donor transfers property to himself as trustee (or to himself and some other person, not possessing a substantial adverse interest, as trustees), and retains no beneficial interest in the trust property and no power over it except fiduciary powers, the exercise or nonexercise of which is limited by a fixed or ascertainable standard, to change the beneficiaries of the transferred property, the donor has made a completed gift and the entire value of the transferred property is subject to the gift tax.

Section 25.2511-2(e) does not define "substantial adverse interest." Section 25.2514-3(b)(2) provides, in part, that a taker in default of appointment under a power has an interest that is adverse to an exercise of the power. Section 25.2514-3(b)(2) also provides that a coholder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate.

In *Estate of Sanford v. Commissioner*, 308 U.S. 39 (1939), the taxpayer created a trust for the benefit of named beneficiaries and reserved the power to revoke the trust in whole or in part, and to designate new beneficiaries other than himself. Six years later, in 1919, the taxpayer relinquished the power to revoke the trust, but retained the right to change the beneficiaries. In 1924, the taxpayer relinquished the right to change the beneficiaries. The Court stated that the taxpayer's gift is not complete, for purposes of the gift tax, when the donor has reserved the power to determine those others who would ultimately receive the property. Accordingly, the Court held that the taxpayer's gift was complete in 1924, when he relinquished his right to change the beneficiaries of the trust. A grantor's retention of a power to change the beneficial interests in a trust causes the transfer to the trust to be incomplete for gift tax purposes, even though the power may be defeated by the actions of third parties. *Goldstein v. Commissioner*, 37 T.C. 897 (1962). *See also Estate of Goelet v. Commissioner*, 51 T.C. 352 (1968).

In this case, Husband and Wife each retained the Grantor's Consent Power over the income and principal of Trust. Under § 25.2511-2(e), a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. Pursuant to Article Second, Paragraph (f), upon the Predeceased Spouse's death, the Predeceased Spouse's remaining interest in Trust (i.e. one-half) that the Predeceased Spouse did not effectively appoint pursuant to his or her limited testamentary power of appointment (Predeceased Spouse Balance) shall be distributed out of, and shall no longer be subject to, the terms of Trust. Consequently, upon the death of the Predeceased Spouse, the Committee will no longer possess any powers over the property transferred to Trust by the Predeceased Spouse. Under § 25.2514-3(b)(2), a coholder of a power is only considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Accordingly, upon the Predeceased Spouse's death, the Committee members would not be takers in

default and do not have interests adverse to the Predeceased Spouse under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). They are merely coholders of the power at the time of the Predeceased Spouse's death. Therefore, the Predeceased Spouse is considered as himself or herself possessing the power to distribute income and principal to any beneficiary because he or she retained the Grantor's Consent Power. The retention of the power with respect to the Predeceased Spouse causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Likewise, after the Predeceased Spouse's death, the Surviving Spouse continues to retain the Grantor's Consent Power over the balance of the Trust. The Committee members are not takers in default for purposes of § 25.2514-3(b)(2). They are merely coholders of the power. The Committee ceases to exist upon the death of the Surviving Spouse. Accordingly, upon the Surviving Spouse's death, the Committee members do not have interests adverse to the Predeceased Spouse under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). Therefore, the Predeceased Spouse is considered as himself or herself possessing the power to distribute income and principal to any beneficiary because he or she retained the Grantor's Consent Power. The retention of the power with respect to the Surviving Spouse causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Husband and Wife also each retained the Grantor's Sole Power over the principal of Trust. Under § 25.2511-2(c), a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries. In this case, the Grantor's Sole Power gives each of Husband and Wife the power to change the interests of the beneficiaries. Accordingly, the retention of the Grantor's Sole Power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Further, each of Husband and Wife retained the Predeceased Grantor's Testamentary Power or Surviving Grantor's Testamentary Power (depending on the order of their deaths) to appoint the property in Trust to any person or persons or entity or entities, other than each respective Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. Under § 25.2511-2(b) the retention of a testamentary power to appoint the remainder of a trust is considered a retention of dominion and control over the remainder. Accordingly, the retention of this power causes the transfer of property to Trust to be incomplete with respect to the remainder in Trust for federal gift tax purposes.

Finally, the Committee possesses the Unanimous Member Power over income and principal. This power is not a condition precedent to Husband's or Wife's powers. Husband's and Wife's powers over the income and principal are presently exercisable and not subject to a condition precedent. Husband and Wife retain dominion and control over the income and principal of Trust until the Committee members exercise their Unanimous Member Power. Accordingly, this power does not cause the transfer of

property to be complete for federal gift tax purposes. *See Goldstein v. Commissioner*, 37 T.C. 897 (1962); *Estate of Goelet v. Commissioner*, 51 T.C. 352 (1968).

Accordingly, based on the facts submitted and the representations made, we conclude that the contribution of property to Trust by Husband and Wife is not a completed gift subject to federal gift tax. Part II, Article Seventh (c) provides that any distribution pursuant to the terms of Trust to either of Husband or Wife prior to the death of the Predeceased Spouse is and shall be a distribution of community property. Accordingly, any distribution from Trust to either Grantor is merely a return of each Grantor's property. Therefore, we conclude that any distribution of property by the Committee from Trust to Husband or Wife will not be a completed gift subject to federal gift tax, by any member of the Committee. Further, upon the Predeceased Spouse's death, the fair market value of the Predeceased Spouse's interest in Trust is includible in the Predeceased Spouse's gross estate for federal estate tax purposes. Moreover, upon the Surviving Spouse's death, the fair market value of the balance in Trust is includible in the Surviving Spouse's gross estate for federal estate tax purposes.

Rulings 4 and 5

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.

Section 2514(c) provides that the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (possessor), the possessor's estate, the possessor's creditors, or the creditors of the individual's estate.

Section 25.2514-1(c)(1) provides, in part, that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the possessor or his creditors, or the possessor's estate or the creditors of the estate.

Section 2514(c)(3)(A) provides that, in the case of a power of appointment created after October 21, 1942, if the power is exercisable by the possessor only in conjunction with the creator of the power, such power is not deemed a general power of appointment.

Section 2514(c)(3)(B) provides that, in the case of a power of appointment created after October 21, 1942, if the power is not exercisable by the possessor 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 possessor, such power shall not be deemed a general power of appointment. For purposes of § 2514(c)(3)(B), a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor'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 possessor's power.

Section 25.2514-3(b)(2) provides, in part, that a co-holder 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 co-holder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditor, 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.

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 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 such a power by a disposition which is of such nature that if it were a transfer or property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

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 provides, in part, that a co-holder 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 co-holder 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.

The powers held by the Committee members under the Grantor's Consent Power are powers that are exercisable only in conjunction with the creators, Husband or Wife. Accordingly, under §§ 2514(b) and 2041(a)(2), the Committee members do not possess general powers of appointment by virtue of possessing this power. Further, the powers held by the Committee members under the Unanimous Member Powers are not general powers of appointment for purposes of §§ 2514(b) and 2041(a)(2). As in the examples in §§ 25.2514-3(b)(2) and 20.2041-3(c)(2), the Committee members have substantial adverse interests in the property subject to this power. Accordingly, any distribution made from Trust to a beneficiary, other than Grantors, pursuant to the exercise of these powers, the Grantor's Consent Power and the Unanimous Member Powers, are not gifts by the Committee members. Instead, such distributions are gifts by the Grantors.

Based upon the facts submitted and representations made, we conclude that any distribution of property by the Committee from Trust to any beneficiary of Trust, other than the Grantors, will not be a completed gift subject to federal gift tax, by any member of the Committee. Further, we conclude that any distribution of property from Trust to a beneficiary other than Grantors will be a completed gift by the Grantors. Part II, Article Seventh (d) provides that all distributions of the net income or principal prior to the death of the Predeceased Spouse, whether made by the Committee, the Disinterested Trustee or a Grantor's exercise of the powers retained by such Grantor, to a beneficiary is and shall be a distribution out of community property. Accordingly, distributions to beneficiaries, other than Grantors, will be gifts made one-half by each Grantor. Finally, we conclude that the powers held by the Committee members are not general powers of appointment for purposes of § 2041(a)(2) and, accordingly, the possession of these powers by the Committee members will not cause Trust property to be includible in any Committee member's gross estate under § 2041(a)(2).

Ruling 6

Section 1014(a) provides, in part, that, except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent will, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(6) provides that, in the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property

laws of any State, is considered, for purposes of section 1014(a), to have been acquired from or to have passed from the decedent if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate.

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

Section 2038(a)(1) provides that the value of the decedent's gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the three-year period on the date of the decedent's death.

Grantors were married and reside in State 2, a community property state. Part II, Article Seventh (a) provides that all transferred property to Trust is community property or is being transmuted into community property. Moreover, any and all property transferred to Trust prior to the death of the Predeceased Spouse is and shall retain its character as community property. Pursuant to Part II, Article Seventh (c) any distribution to either of Husband or Wife prior to the death of the Predeceased Spouse is and shall be a distribution of community property. Husband and Wife each retained the Grantor's Sole Power and the Predeceased Spouse retains the Predeceased Grantor's Testamentary Power. As concluded above, upon the death of each Grantor, his or her respective interest in Trust as either the Predeceased Spouse or the Survivor Spouse will be includible in their respective gross estates for federal estate tax purposes. Accordingly, based upon the facts submitted and representations made, we conclude that the basis of all community property in Trust on the date of death of the Predeceased Spouse will receive an adjustment in basis to the fair market value of such property at the date of death of the Predeceased Spouse assuming that the Committee is in existence at the time of the death of the Predeceased Spouse, such that Trust is not a grantor trust as to either grantor.

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. Specifically, we express no opinion on trust provisions permitting the Trustee to distribute income or principal to trustees of "Qualified Trusts."

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, copies of this letter are being sent to the taxpayer's authorized representative.

Sincerely,

Faith P. Colson
Faith P. Colson
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this Letter.
Copy for § 6110 purposes

cc: