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September 20, 2018

RE:

Legend

Husband	=
Wife	=
Trust	=
Child 1	=
Child 2	=
Individual 1	=
Individual 2	=
Trustee	=
State 1	=
State 2	=
Guardian 1	=
Guardian 2	=
Power of Appointment Committee	=

,

Dear :

This responds to a letter dated March 22, 2018, requesting rulings under the Internal Revenue Code.

Facts

The facts submitted and representations made are as follows. Grantors (Husband and Wife) intend to establish an irrevocable trust (Trust) for the benefit of Grantors, Child 1, Child 2, Individual 1, Individual 2, and charities. Child 1, Child 2, Individual 1 and Individual 2 are referred to collectively as Lifetime Beneficiaries. Trust is a domestic trust governed by the laws of State 1. A corporate trustee (Trustee) is the sole trustee of Trust. Grantors are married and reside in State 2, a community property state.

The terms of Trust provide that while either Grantor is living, the Trustee shall not make any distributions except as appointed by Grantors or the Power of Appointment Committee (Committee).

While either Grantor is living, either or both Grantor may (but are not required to) appoint trust principal (including the whole thereof) outright or in trust to or for the benefit of any one or more of the Lifetime Beneficiaries as Grantors deem advisable at any time and from time to time for the beneficiary's health, education, maintenance, or support (Grantor's Sole Power). The exercise of the power will be in a nonfiduciary capacity.

While either Grantor is living, a majority of the Committee members, with Grantors' written consent, may (but are not required to) appoint trust income or principal (including the whole thereof) outright or in trust to or for the benefit of any one or more of the Grantors or the Lifetime Beneficiaries for any purpose at any time and from time to time (Grantor's Consent Power). Further, while either Grantor is living, the members of the Committee other than Grantors, by unanimous vote, may (but are not required to) appoint trust income or principal (including the whole thereof) to or for the benefit of any one or more of the Grantors or the Lifetime Beneficiaries for any purpose at any time and from time to time (Unanimous Member Power).

Trust provides that the members of the Committee shall initially consist of the Grantors, their children, Child 1 and Child 2 when they reach 18 years of age, Individual 1, and Individual 2. Until each of Child 1 and Child 2 reaches age 18, Guardian 1 and Guardian 2, shall serve for each of them respectively. At all times there must be two members of Committee in addition to Grantors. If at any time there are fewer than two members other than Grantors, the Committee automatically ceases to exist. The Committee shall also cease to exist upon the death of the survivor of Grantors (Surviving Grantor).

While either Grantor is living, if at any time the Committee ceases to exist, Trustee may (but is not required to) distribute income or principal of the trust to the Lifetime Beneficiaries or, with the consent of an adverse party other than one of the Grantors within the meaning of § 672(a), to either one or both of Grantors. Any net income not distributed must be accumulated and added to the principal of the trust. Under no

circumstances may Trustee make any distribution to any beneficiary in a manner that would discharge any or both of Grantors' legal obligations.

Each Grantor may appoint one-half of the Trust to any one or more persons or charities qualified under § 2055 in equal or unequal proportions and on any terms or conditions as each Grantor may designate. Each Grantor may exercise this limited power by valid will or valid living revocable trust, and the appointment will be effective immediately upon the death of the person exercising the power (Grantor's Testamentary Power). Neither Grantor may exercise this power for the purpose of discharging their legal obligations or otherwise for their pecuniary benefit.

Upon the death of each Grantor, any property remaining of the Grantor's entire one-half interest that has not been effectively appointed by Grantor's Testamentary Power, shall be distributed as follows: 10 percent of the remaining trust property in equal shares in trust to each member of Committee other than Grantors, to be administered for each beneficiary in a separate trust for the benefit of the beneficiary as provided by Trust; 10 percent of the remaining trust property to one or more charities supported by Grantors during their lifetimes; and the balance among Grantors' descendants and charities as the Trustee, in its sole discretion, may determine.

Trust provides that all transferred property to Trust is community property and 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. Any and all property transferred to the Trustee prior to the death of the first Grantor to die (Predeceased Grantor) is and shall retain its character as community property.

Any appointment of property pursuant to the terms of Trust to either Grantor prior to the death of the Predeceased Grantor is and shall be a distribution of community property. All distributions of the net income or principal to one or more of the Lifetime Beneficiaries prior to the death of the Predeceased Grantor, whether made by the Committee, Trustee, or a Grantor's exercise of the powers retained by such Grantor, is and shall be a distribution out of community property.

Prior to the death of the Predeceased Grantor, any exercise of either Grantor's Sole Power shall be funded equally from each Grantor's share of community property held in Trust. Each Grantor consents to all such appointments made by the other Grantor.

With respect to a Grantor's Testamentary Power retained by the Predeceased Grantor, any such appointment by the decedent Grantor shall be funded solely from the decedent Grantor's one-half interest in property in Trust.

Each Grantor affirmatively agrees and confirms that any joint appointment (by each Grantor or the Committee) or Trustee distribution from Trust to one of the Lifetime

Beneficiaries shall be funded equally from each Grantor's share of community property in Trust.

It is represented that Trustee, Grantors, and members of the Committee are all United States persons within the meaning of § 7701(a)(30)(A).

You request the following rulings:

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

2. The contribution of property to Trust by Grantors will not be a completed gift subject to federal gift tax.

3. Any distribution of property by the Committee from Trust to either Grantor 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 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, other than the Grantors.

5. No member of the Committee 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.

6. The basis of all community property in Trust on the date of death of the Predeceased Grantor will receive an adjustment in basis to the fair market value of such property at the date of death of the Predeceased Grantor.

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 by 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.

Section 679(a) provides that a United States person who directly or indirectly transfers property to a foreign trust shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of the trust.

Based solely on the facts submitted and representations made, we conclude that an examination of Trust reveals none of the circumstances that would cause Grantors to be treated as the owner of any portion of Trust under § 673, 674, 676, 677 or 679 as long as Trust is a domestic trust and Committee remains in existence and serving. Because none of the members of Committee have 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 Grantors under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantors 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 for the imposition of a gift tax for each calendar year on the transfer of property by gift during such calendar year by any individual. Section 2511(a) provides that the gift tax 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, with respect to which the donor has so parted with dominion and control as to leave the donor with no power to change the disposition of the property, 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) provides an example, where the donor transfers property 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 had 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 to the property 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.

Under § 25.2511-2(e), a donor is considered as possessing a power if it is exercisable by the donor in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. A trustee, as such, is not a person having an adverse interest in the disposition of the trust property or its income.

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.

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, Grantors 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 Trust, upon the Predeceased Grantor's death, the Predeceased Grantor's remaining interest in Trust (*i.e.,* one-half) that the Predeceased Grantor did not effectively appoint pursuant to his or her limited testamentary power of appointment shall be distributed out of, and shall no longer be subject to, the terms of Trust. Consequently, upon the death of the Predeceased Grantor, the Committee will no longer possess any powers over the property transferred to Trust by the Predeceased Grantor. 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 Grantor's death, the Committee members would not be takers in default and do not have interests adverse to the Predeceased Grantor 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 Grantor's death. Therefore, the Predeceased Grantor 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 Grantor causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Likewise, after the Predeceased Grantor's death, the Surviving Grantor continues to retain the Grantor's Consent Power over the balance of 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 Grantor. Accordingly, upon the Surviving Grantor's death, the Committee members do not have interests adverse to the Predeceased Grantor under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). Therefore, the Surviving Grantor 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 Grantor causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

If the Committee ceases to exist, the Trustee has the power to distribute income and principal to the beneficiaries. However, the Trustee's power is not a condition precedent to each Grantor's Consent Power. Each Grantor's Consent Power over income is presently exercisable and not subject to a condition precedent. Thus, the Trustee's power to distribute income and principal does not cause the transfer of property to be complete with respect to the income and principal interests in Trust for federal gift tax purposes. Therefore, each Grantor is considered as possessing the power to distribute income to any beneficiary himself or herself because he or she retained the Grantor's Consent Power.

Each Grantor also 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 as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard. In this case, the Grantor's Sole Power gives each Grantor the power to change the interests of the beneficiaries. Even though each Grantor's power is limited by an ascertainable standard, *i.e.,* health, education, maintenance and support, each Grantor's power is not a fiduciary power. If the Committee ceases to exist, the Trustee, in its fiduciary capacity, also has the power to distribute principal to one or more beneficiaries. Trustee is a corporate trustee and, under the terms of the trust instrument, cannot be related or subordinate within the meaning of § 672(c) to the Grantors. The powers of the Trustee are not conditions precedent to the Grantors' powers. Each Grantor's Sole Power over principal is presently exercisable and not subject to a condition precedent. Accordingly, each Grantor retains dominion and control over the principal of Trust until the Trustee exercises his or her power to appoint principal. *See Goldstein v. Commissioner*, 37 T.C. 897 (1962). Thus, the Trustee's powers to distribute principal do not cause the transfer of property to be complete with respect to the remainder in Trust for federal gift tax purposes. Accordingly, the retention of the Grantor's Consent Power and the Grantor's Sole Power causes the transfer of property to Trust to be incomplete for federal gift tax purposes.

Further, each Grantor retained either a Predeceased Grantor's Testamentary Power or a Surviving Grantor's Testamentary Power (depending upon the order of death) to appoint the property in Trust to any persons, other than to the Grantor's estates, Grantor's creditors, or the creditors of Grantor's estates. Under § 25.2514-3(b)(2), 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 for federal tax purposes.

Finally, the Committee members possess the Unanimous Member Power over income and principal. This power is not a condition precedent to Grantors' powers. Each Grantor's powers over the income and principal are presently exercisable and not subject to a condition precedent. Each Grantor retains dominion and control over the income and principal of Trust until the Committee members exercise their Unanimous Member Powers. Accordingly, the Unanimous Member Power does not cause the transfer of property to be complete with respect to the income interest 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 Grantors is not a completed gift subject to federal gift tax. Any distribution from Trust to either grantor prior to the death of the Predeceased Grantor is a distribution of community property. Any distribution from Trust to either Grantor is merely a return of each Grantor's property. Therefore, we conclude that any distribution of property from Trust by the Committee to either Grantor will not be a completed gift subject to federal gift tax, by any member of the Committee. Further, upon the Predeceased Grantor's death, the fair market value of the Predeceased Grantor's interest in Trust is includible in the Predeceased Grantor's gross estate for federal estate tax purposes. Moreover, upon the Surviving Grantor's death, the fair market value of the balance in Trust is includible in the Surviving Grantor'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 possessor'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 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 possessor'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.

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 of 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 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.

The powers held by the Committee members under the Grantor's Consent Power are a power that is exercisable only in conjunction with the creators, either Grantor (or the survivor thereof). 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 Power is not a general power 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 to either Grantor, pursuant to the exercise of these powers, the Grantor's Consent Power and the Unanimous Member Power, 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. Trust provides that all distributions of the net income or principal prior to the death of the Predeceased Grantor, whether made by the Committee, the 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 § 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 reside in State 2, a community property state. Trust 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 Grantor is and shall retain its character as community property. As concluded above, upon the death of each Grantor, his or her respective interest in Trust as either the Predeceased Grantor or the Surviving Grantor will be includible in his or her respective gross estate 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 Grantor will receive an adjustment in basis to the fair market value of such property at the date of death of the Predeceased 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 the trust provisions permitting Trustee to distribute income or principal to trustees of other trusts (decanting) or any other trust provisions not referenced in this private letter ruling.

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, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Karlene M. Lesho
Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes
Copy of letter