

**Internal Revenue Service**

Department of the Treasury  
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April 23, 2009

**LEGEND**

Decedent =

Trust =

Niece =

Dear :

This letter responds to a request for a private letter ruling concerning certain federal income tax consequences of a proposed division of a trust.

**FACTS**

Decedent created Trust under Decedent's will in 1966 for the benefit of Niece's issue. In general, the trustee is directed to distribute all of the net income of Trust to the issue of Niece in equal shares per stirpes during Niece's lifetime. The Trust will terminate upon the death of and the assets will be distributed in equal shares per stirpes to the issue of Niece then living. Niece has five living children.

The trustee of Trust proposes to divide Trust into five equal and separate trusts, one for the benefit of each living child of Niece. A pro rata portion of the Trust's assets will be allocated each of the five new trusts.

**LAW AND ANALYSIS**

Section 61(a)(3) of the Internal Revenue Code provides that gross income includes gain derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

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

Rev. Rul. 56-437, 1956-2 C.B. 507, holds that the conversion of a joint tenancy in stock to a tenancy in common in order to eliminate the survivorship feature and the partition of a joint tenancy in stock are not sales or exchanges. Similarly, divisions of trusts are also not sales or exchanges of trust interests where each asset is divided pro rata among the new trusts. See Rev. Rul. 69-486, 1969-2 C.B. 159 (pro rata distribution of trust assets not a sale or exchange).

Here, Trust's assets will be distributed in kind on a pro rata basis among the five separate trusts. Accordingly, the division of Trust will not result in the realization of gain or loss under §§ 61 and 1001.

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

This 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.

In accordance with the Power of Attorney on file with this office, a copies of this letter are being sent to your authorized representatives.

Sincerely,

Michael J. Montemurro  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)