

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
August 17, 2009

Grantor =

Beneficiary =

A =

Company =

Z =

Y =

Dear :

This is in response to a letter dated March 3, 2009, submitted by your authorized representative, requesting rulings under §§ 671 through 679 of the Internal Revenue Code.

The information submitted states that Grantor proposes to create a trust ("Trust") for the benefit of Beneficiary. Under the terms of Trust, Beneficiary will serve as the Investment Trustee of Trust, A will serve as the Distribution Trustee of Trust and Company will serve as the Administrative Trustee of Trust (collectively, "Trustees"). A will have no beneficial interest in Trust. The Distribution Trustee will be authorized, but not required, to distribute income or corpus of Trust to Beneficiary. Beneficiary will have the power, during his lifetime, to direct the net income and/or principal of the Trust to be paid over or applied for Beneficiary's benefit, but only to the extent necessary for Beneficiary's health, education, maintenance or support. This power will not lapse.

Additionally, Beneficiary will have the power to withdraw any property assigned, transferred or delivered, to the extent constituting a direct or indirect transfer for federal

gift tax purposes, by Grantor to the Trustees. This power will lapse each calendar year in an amount equal to the greater of \$z or y% of the value of the corpus of the Trust.

Upon Beneficiary's death, all of the income and principal of Trust will be distributed either outright or in trust to such person or persons (other than Beneficiary, Grantor, their estates, their creditors and the creditors or their estates) and/or qualified charitable organizations as Beneficiary may appoint by Beneficiary's will. If Beneficiary does not exercise this power, the Distribution Trustee shall select one or more qualified charitable organizations for the distribution of the income and principal of Trust.

Grantor is not a beneficiary under the Trust, and has no interest under the Trust. Trust provides that no income or principal of Trust may be paid or appointed for the benefit of Grantor or Grantor's spouse, or to pay premiums on insurance policies on the life of Grantor and/or Grantor's spouse. Trust further provides that neither Grantor nor Grantor's spouse may act as a Trustee of Trust and that no more than one-half of Trustees of Trust may be related or subordinate parties to Grantor, within the meaning of § 672(c).

Trust further provides that Grantor does not intend to be treated under subpart E of Part I of subchapter J as the owner of Trust. Trust further provides that neither Grantor nor any other "nonadverse party" as that term is defined in § 672(b) shall have the power to (1) purchase, exchange or otherwise deal with or dispose of Trust's principal or income for less than adequate consideration or (2) borrow any of Trust's principal or income without adequate interest or security.

Trust further provides that no person, other than a United States person, shall have the authority to control any substantial decision (within the meaning of § 7701(a)(30)(E) of any trust created and held under Trust. No court, other than a court within the United States, shall exercise primary supervision over the administration of any trust created and held under Trust. Grantor and Beneficiary represent that Trust will be a domestic trust within the meaning of §301.7701-7 of the Procedure and Administration Regulations.

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.

Sections 673 through 679 specify the circumstances under which the grantor or another person will be regarded as the owner of a portion of a trust.

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 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, in general, 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 there from 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 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Section 679(a)(1) generally 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 such trust.

Accordingly, based solely on the facts and representations submitted, we conclude that Grantor is not an owner of Trust under § 671. An examination of Trust reveals none of the circumstances that would cause Grantor or any other person to be treated as the owner of any portion of Trust under §§ 673, 674, 676, 677, or 679.

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 Grantor or any other person under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor or any other person 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.

We further conclude that Beneficiary will be treated as the owner of Trust for federal income tax purposes under §§ 671 and 678, before and after the lapse of Beneficiary's power of withdrawal with regard to any transfer to Trust.

Except as specifically ruled herein, we express or imply 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 under any provision of Chapters 11, 12, and 13 of the Code.

Pursuant to a Power of Attorney on file, a copy of this letter is being sent to your authorized representative.

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

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
(Passthroughs and Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for Section 6110 purposes

cc: