

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201326011**

Release Date: 6/28/2013

Index Number: 671.02-00, 674.01-00,
677.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-152282-12

Date:
March 21, 2013

Legend

Grantor =

Trust =

Date =

State =

Dear :

This letter responds to a letter dated November 1, 2012, submitted on behalf of Grantor, requesting a ruling under § 671 of the Internal Revenue Code.

On Date, Taxpayer created Trust under the laws of State for benefit of herself and her children. Article XIV provides that the trust is irrevocable and may not be altered, amended, or revoked.

Article II provides that during the Grantor's lifetime, the Trustee shall pay to or apply for the benefit of at the Grantor all of the net income thereof, at least quarterly. The term "net income" shall mean the income remaining after payment of all costs and expenses normally chargeable to income and the setting aside of such reserve as the Trustee deems proper for said expenses. Upon the Grantor's death, net income for the period between the last distribution date and the date of the Grantor's death shall be added to

principal. Under no circumstances and notwithstanding anything to the contrary otherwise contained in the Indenture, shall the Trustee make any payment from the principal of the trust to or for the benefit of the Grantor and the Trustee is specifically prohibited from making any such payment. The Grantor shall have the power to appoint by Will, by making specific reference to the special power of appointment, all or any part of the Trust property/principal (including capital gains resulting from the sale of any trust property during the Grantor's lifetime) then on hand at the time of the Grantor's death to or for the benefit of any one or more of the Grantor's children, their spouses and/or issue, and/or to or for the benefit of the siblings of the Grantor and/or the spouses or issue of such siblings, in such parts, amounts or proportions, outright or upon such terms, trusts, conditions and limitations, naming such trustee or trustees and with such discretionary powers, as the Grantor may so appoint.

Article III(D) provides that none of the provisions of the State Principal and Income Act, including any subsequent amendments thereto, shall apply to the trust. All items of interest, rents (net of expenses) and ordinary dividends (excluding dividends derived from capital gains) shall be allocated to income and all other receipts (including, but not limited to, receipts from the sale or mortgaging of any trust property) paid to or received by the trust shall be allocable to principal.

Article VII provides that, during the lifetime of the Grantor, the Grantor's brother-in-law acting as an "Independent Trustee," shall possess the power, exercisable by the Independent Trustee from time to time, to direct the distribution of all or any portion of the principal of the trust to any one or more of the Grantor's children and/or their issue from time to time living as the Independent Trustee in its discretion may deem advisable. Such power shall be exercised by written direction signed by the Independent Trustee and delivered to the Trustee(s) during the lifetime of the Grantor. From and after receipt of such writing, the Trustee shall distribute all or a portion of the principal of the trust to the extent, and to the person(s), so directed by the Independent Trustee. The Trustee shall have the right to conclusively rely upon such written direction without incurring any liability to any beneficiary. If an independent Trustee becomes incompetent, the office of Independent Trustee shall be deemed vacant. An Independent Trustee may at any time resign as Independent Trustee by written notice to the then Trustee(s) serving. If at any time there shall be no Independent Trustee serving due to the incompetency or death of an Independent Trustee, due to the resignation of an Independent Trustee, or due to any other reason, a majority of the then living and competent children of the Grantor may designate in writing as a successor Independent Trustee any person of their choosing, provided that such person shall be the Grantor or a person who is an adverse, related or subordinate party, as defined in § 672 of the Code. No Independent Trustee shall serve in such office until he/she agrees to act as such. Whenever reference is made to "Trustee" or "Trustees," such reference shall not include any Independent Trustee then acting.

The Trustees of Trust are the Grantor's three children. Article IX(l) provides that a majority of Trustees shall be sufficient to make any decision or execute any document that shall carry out any of the provisions.

Grantor requests a ruling under § 671 that during the Grantor's lifetime, the Grantor will be considered the owner of the income and corpus of Trust for federal income tax purposes.

Section 671 provides, in part, that where it is specified in subpart E 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 this chapter in computing taxable income or credits against the tax of an individual.

Section 674(a) provides that the grantor is 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)(3) provides that § 674(a) does 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 disposition by the grantor or may be accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 1.674(b)-1(b)(3) of the Income Tax Regulations provides that, if a trust instrument provides that the income is to be accumulated during the grantor's life and that the grantor may appoint the accumulated income by will, the grantor is treated as the owner of the trust. Moreover, if a trust instrument provides that the income is payable to another person for his life, but the grantor has a testamentary power of appointment over the remainder, and under the trust instrument and local law capital gains are added to corpus, the grantor is treated as the owner of a portion of the trust and capital gains and losses are included in that portion.

Section 677(a)(1) provides that the grantor is treated as the owner of any portion of a trust 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 distributed to the grantor or the grantor's spouse.

Based solely on the facts submitted and the representations made, we conclude that, because the net income of Trust must be paid to Grantor at least annually, Grantor will be treated as the owner of the income of Trust during the trust term under § 677(a).

Because Grantor has a testamentary power of appointment over the corpus of Trust (and any accumulated income allocable to corpus) and, pursuant to the document, capital gains are added to corpus, Grantor will be treated as the owner of the corpus of Trust during the trust term under § 674(a).

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. 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. 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. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

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

cc: