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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-110403-16

Date:
September 23, 2016

In Re: Request for Rulings

Legend:

Settlor	=
A	=
B	=
C	=
D	=
BB 1	=
BB 2	=
CC 1	=
CC 2	=
Trust 1	=
Subtrust 1-B	=
Subtrust 1-C	=
Subtrust 1-D	=
Trust 2	=
Subtrust 2-B	=
Subtrust 2-C	=
Subtrust 2-D	=
Trustee	=
Date 1	=
Date 2	=
State A	=
State B	=
State A Court	=
State B Court	=

State A Statute 1 =
State A Statute 2 =

State B Statute 1 =

State B Statute 2 =
State B Statute 3 =
X =
Year 1 =
Year 2 =

Dear :

This responds to your authorized representative's letter of March 23, 2016, requesting rulings on the federal income, gift, estate and generation-skipping transfer (GST) tax consequences of the proposed division of Trust 1 and Trust 2.

The facts submitted and representations made are as follows. On Date 1, a date before September 25, 1985, Settlor created Trust 1, an irrevocable trust for the benefit of the descendants of Settlor's child, A. Under Article III, Section 3.02 of Trust 1, income is distributable to A's children and the descendants of any deceased child of A. A has three adult children (B, C, and D) and four minor grandchild (BB 1, BB 2, CC 1, and CC 2).

Under Section 3.02(1), the trustee may withhold distribution of income. The withheld income may be accumulated and added to principal, set aside for future distribution, or distributed to or for the benefit of the beneficiaries then entitled to the income. Under Section 3.02(2), the trustee, in exercising the power to withhold or distribute income, is to take into account the needs and other income and resources of the beneficiaries, including those for health, medical care, support, and education. Under Section 3.08, if, in the trustee's opinion, the share of income to which a child of A is entitled is insufficient for the child's proper care, education and support, and in particular cases of severe or protracted illness, the deficiency may be made up by payments of principal. The trustee may require that the advances be restored from future income.

Section 3.03 provides that trust principal and accumulated income is to be distributed to A's children, per stirpes, one year after A's death. Under Section 3.04, if, at final distribution of the trust, a child of A has died without surviving descendants, that child's share is to be reallocated to his or her siblings per stirpes. Section 3.05 provides that if a beneficiary is under age 21 at the time of distribution, his or her share is to be held, and the income is to be applied to his or her education, support and maintenance. The trustee may accumulate the income as deemed necessary. The beneficiary's share is to be distributed outright on his or her reaching age 21.

Section 5 of Exhibit “A” of Trust 1 provides that the trustee is expressly authorized to make any division, distribution or partition of property in cash or otherwise, and to allot any property, including an undivided interest therein, to any trust or share. Section 3.10 provides that where any portion of Trust 1 is designated as a separate trust for the benefit of a grandchild of Settlor, the share is to constitute a separate fund. Article IV, Section 4.01 provides that the trust is to be interpreted under the laws of State A.

On Date 2, a date before September 25, 1985, Settlor created Trust 2, another irrevocable trust for the benefit of A's descendants. The provisions of Trust 2 are identical to those of Trust 1, except in the following respects: Trust 2 does not provide for distributions to the descendants of any deceased child of A during the trust term, and, under Article III, Section 3.02(3) of Trust 2, A's children have a non-cumulative right, exercisable within 60 days after receiving notice, to withdraw a pro rata portion of property transferred to Trust 2 during a calendar year.

Trustee proposes to divide Trust 1 into Subtrust 1-B (for B and B's descendants), Subtrust 1-C (for C and C's descendants), and Subtrust 1-D (for D and D's descendants). Each Subtrust will be funded with a pro rata share of each asset of Trust 1.

The provisions of Trust 1 will govern Subtrust 1-B, Subtrust 1-C, and Subtrust 1-D, except that each respective Subtrust will be held exclusively for the benefit of the child (and the child's descendants) for whom that Subtrust was created. Income will be payable to the respective child or accumulated, in the trustee's discretion. If the child dies before termination of the Subtrust with any descendant living, income will be payable to the child's descendants, or accumulated, in the trustee's discretion. Prior to the termination of the Subtrust, principal may be distributed to the child in accordance with Section 3.08 of Trust 1.

If A has or adopts another child (After-Born Child) prior to termination of a Subtrust, all of the Subtrusts held for A’s children shall be reallocated to create a new Subtrust for this After-Born Child, such that the After-Born Child’s Subtrust will receive a fraction of the aggregate value of the Subtrusts then existing and held for A’s descendants. The numerator of the fraction shall be one and the denominator of the fraction shall be one plus the number of Subtrusts held for A’s children immediately before the birth or adoption of the After-Born Child. Each existing Subtrust for a child of A shall contribute to the Subtrust for the After-Born Child in the proportion that its value bears to the aggregate value of all such Subtrusts for A’s children.

If a child of A and all descendants of that child die before the termination of that child’s Subtrust, the deceased child’s Subtrust will be reallocated so as to be added to or used to fund the Subtrusts held for that child’s siblings or their descendants or, if

there are no other descendants of A then living, will remain in existence until the termination of the Subtrusts created for children of A, with income being payable to any After-Born Child of A, or to the descendants of any deceased After-Born Child of A, or accumulated if there is no After-Born Child of A or descendant of a deceased After-Born Child of A.

Each Subtrust then in existence will terminate one year after the death of A. Distribution or termination will be to the child of A if then living, otherwise per stirpes to the deceased child of A's then-living descendants, or if none, per stirpes to the then living descendants of A for whom the Subtrust was created. On termination, if there is no living descendant of A, the trust property will be distributed among the trusts established in Year 1 for the children of Settlor other than A or to subtrusts which have been created for the children of Settlor other than A, or directly to the ultimate beneficiaries thereof if any trust established in Year 1 or subtrust has been terminated prior to termination of the Subtrust then terminating.

Likewise, Trustee proposes to divide Trust 2 into Subtrust 2-B (for B and B's descendants), Subtrust 2-C (for C and C's descendants), and Subtrust 2-D (for D and D's descendants). Each Subtrust will be funded with a pro rata share of each asset of Trust 2.

The provisions of Trust 2 will govern Subtrusts 2-B, 2-C, and 2D, except that each respective Subtrust will be held exclusively for the benefit of the child (and the child's descendants) for whom that Subtrust was created. Income will be payable to the respective child or accumulated, in the trustee's discretion. If the child dies before termination of the Subtrust with any descendant living, income will be accumulated. Additions to the Subtrust will be subject to the child's withdrawal right under Section 3.02(3) of the Trust 2 agreement. Prior to termination of the Subtrust, principal may be distributed, in accordance with Section 3.08 of Trust 2, but only to a child beneficiary.

If A has or adopts another child (After-Born Child) prior to termination, all of the Subtrusts held for A's children shall be reallocated to create a new Subtrust for this After-Born Child, such that the After-Born Child's Subtrust will receive a fraction of the aggregate value of the Subtrusts then existing and held for A's descendants. The numerator of the fraction shall be one and the denominator of the fraction shall be one plus the number of Subtrusts held for A's children immediately before the birth or adoption of the After-Born Child. Each existing Subtrust for a child of A shall contribute to the Subtrust for the After-Born Child in the proportion that its value bears to the aggregate value of all such Subtrusts for A's children.

If a child of A and all descendants of that child die before the termination of that child's Subtrust, the deceased child's Subtrust will be reallocated so as to be added to or used to fund the Subtrusts held for that child's siblings or their descendants or, if there are no other descendants of A then living, will remain in existence until the

termination of the Subtrusts created for children of A, with income being payable to any After-Born Child of A, or accumulated if there is no After-Born Child of A.

Each Subtrust will terminate one year after A's death. Distribution on termination will be to the child if then living, otherwise per stirpes to the deceased child's then-living descendants, or if none, per stirpes to the then living descendants of A who is the parent of the child for whom that Subtrust is created. On termination, if there is no living descendant of A who is the parent of the child for whom a Subtrust is created, the trust property will be distributed among the Year 2 trusts for the children of Settlor other than A, or to subtrusts which have been created for the children of Settlor other than A, or directly to the ultimate beneficiaries thereof if any such Year 2 Trust or subtrust has been terminated prior to the termination of the Subtrust then terminating.

Pursuant to an order of State A Court, the administration and situs of Trust 1 and Trust 2 were moved to State B. Trustee is now administering the trusts in State B. Therefore, the division of Trust 1 and Trust 2 will be effected pursuant to a proceeding in and by order of State B Court, which will apply State A law to construe the trusts.

State A Statute 1 provides that an irrevocable trust may be terminated or its dispositive provisions modified by the court with the consent of all of the beneficiaries if continuance of the trust on the same or different terms is not necessary to carry out a material purpose. State A Statute 2 provides that:

> 1. Without approval of a court, a trustee may divide a trust into two or more separate trusts with substantially similar terms if the division will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries unless the trust is a court reporting trust.
>
> 2. On petition by a trustee or beneficiary, the court may divide a trust into two or more separate trusts, whether or not their terms are similar, if the court determines that dividing the trust is in the best interest of the beneficiaries and will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries. To facilitate the division, the trustee may divide the trust assets in kind, by pro rata or non-pro rata division, or by any combination of the methods.
>
> 3. By way of illustration and without limitation, a trust may be divided pursuant to this section to allow a trust to qualify as a marital deduction trust for tax purposes, as a qualified subchapter S trust for federal income tax purposes, as a separate trust for federal generation skipping tax purposes, or for any other federal or state income, estate, excise, or inheritance tax benefit, or to facilitate the administration of a trust.

State B Statute 1 provides that to the extent there is no conflict of interest between the representative and the represented beneficiary with respect to the particular question or dispute, a beneficiary who is a minor or a beneficiary with a disability or an unborn beneficiary, or a beneficiary whose identity or location is unknown and not reasonably ascertainable (hereinafter referred to as an "unascertainable beneficiary"), may for all purposes be represented by and bound by another beneficiary having a substantially similar interest with respect to the particular question or dispute; provided, however, that the represented beneficiary is not otherwise represented by a guardian or agent in accordance with subdivision [X] or by a parent in accordance with [State B Statute 3].

State B Statute 2 provides that if all primary beneficiaries of a trust either have legal capacity or have representatives in accordance with this subsection who have legal capacity, the actions of such primary beneficiaries, in each case either by the beneficiary or by the beneficiary's representative, shall represent and bind all other beneficiaries who have a successor, contingent, future, or other interest in the trust.

State B Statute 3 provides, in part, that if a trust beneficiary is a minor or a person with a disability or an unborn person and is not represented by a guardian or agent in accordance with subdivision [X], then a parent of the beneficiary may represent and bind the beneficiary, provided that there is no conflict of interest between the represented person and either of the person's parents with respect to the particular question or dispute.

It is represented that no additional contributions have been made to Trust 1 or Trust 2 after September 25, 1985.

You have requested the following rulings.

(1) The division of Trust 1 and Trust 2 into Subtrusts will not cause Trust 1, Trust 2, or a post-division Subtrust to lose its “grandfathered” status for purposes of the GST tax or otherwise become subject to the GST tax.

(2) The Subtrusts resulting from the division of Trust 1 and Trust 2 will be treated as separate trusts for federal income tax purposes.

(3) The division of Trust 1 and Trust 2 into Subtrusts will not cause Trust 1, Trust 2, a post-division Subtrust, or any beneficiary to recognize gain or loss from a sale or other disposition of property under § 61, § 662, or § 1001.

(4) The tax basis of the Subtrust assets received from Trust 1 and Trust 2 will be the same as the tax basis in those assets of Trust 1 and Trust 2, and the Subtrusts' holding periods in those assets will include the holding periods in those assets of Trust 1 and Trust 2.

(5) The division of Trust 1 and Trust 2 and the pro rata allocation of Trust 1 and Trust 2 assets to the Subtrusts will not cause those assets to be includible in a beneficiary's gross estate.

(6) The division of Trust 1 and Trust 2 and the pro rata allocation of Trust 1 and Trust 2 assets to the Subtrusts will not constitute a transfer subject to federal gift tax under § 2501.

Ruling 1:

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip. Under § 1433 of the Tax Reform Act of 1986 (Act), GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the GST tax, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(2) provides that, for purposes of this section, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a

modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, considers a situation in which, in 1980, Grantor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, per stirpes. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, per stirpes. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, Trust 1 and Trust 2 were irrevocable on September 25, 1985. It is represented that no trust additions have been made after September 25, 1985.

The proposed division of Trust 1 into Subtrust 1-B, Subtrust 1-C, and Subtrust 1-D, and Trust 2 into Subtrust 2-B, Subtrust 2-C, and Subtrust 2-D are substantially similar to the situation described in Example 5 of § 26.2601-1(b)(4)(i)(E). Under the proposed division, the Trust 1 Subtrusts will, except as described above, be administered under the original terms of Trust 1. Likewise, the Trust 2 Subtrusts will, except as described above, be administered under the original terms of Trust 2.

Based on the facts submitted and the representations made, and provided the State A Court order is effective under State A law and includes the division as described above, we conclude that the proposed division of Trust 1 and Trust 2 will not shift a beneficial interest in the respective Trusts to any beneficiary who occupies a lower generation than the persons holding the beneficial interests prior to the division. In addition, the proposed division will not extend the time for vesting of any beneficial interest in the Subtrusts beyond the period provided in the original terms of Trust 1 and Trust 2, respectively. Accordingly, the proposed division will not cause Trust 1, Trust 2, or the Subtrusts to lose their exempt status and will not cause any distribution from or termination of any interests in Trust 1, Trust 2, or the Subtrusts to be subject to GST tax under § 2601.

Ruling 2:

Section 643(f) provides that, for purposes of subchapter J of chapter 1 of subtitle A, under regulations prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1.

Section 1806(b) of the Tax Reform Act of 1986 provides that § 643(f) shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust that was irrevocable on March 1, 1984, it shall apply only to that portion of the trust that is attributable to contributions of corpus after March 1, 1984.

It is represented that each Subtrust will have different beneficiaries. It is further represented that no portion of the principal of Trust 1 and Trust 2 was contributed after March 1, 1984. Based on the facts submitted and the representations made, we conclude that as long as Subtrusts are separately managed and administered, they will be treated as separate trusts for federal income tax purposes.

Ruling 3:

Section 61(a)(3) provides that gross income includes gain derived from dealings in property.

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year. However, such deduction shall not exceed the distributable net income (DNI) of the estate or trust.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662(a) provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661, the sum of the following amounts (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

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) 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).

In the present case, the assets of Trust 1 and Trust 2 will be distributed in kind on a pro rata basis among the Subtrusts. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division of Trust 1 and Trust 2 will not result in the realization of gain or loss under § 61 and § 1001 and that the proposed division is not a distribution under § 661, § 662, or § 1.661(a)-2(f).

Ruling 4:

Section 1015(b) provides that if property is acquired after December 31, 1920, by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by transfer in trust by gift, bequest, or devise), the basis of property so acquired is the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by transfer in trust, this basis applies whether the property is in the hands of the trustee or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Based on the facts submitted and representations made, we conclude that because § 1001 does not apply to the division of Trust 1 and Trust 2, under § 1015 the basis of the assets received by the Subtrusts from Trust 1 and Trust 2 will be the same after the division as the basis of those assets in the hands of Trust 1 and Trust 2 before the division. Likewise, the holding period of each asset in the hands of a new Subtrust will be the same as the holding period of that asset in the hands of Trust 1 or Trust 2 immediately before the distribution in further trust.

Ruling 5:

Section 2035(a) provides that if (1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the three-year period ending on the date of the decedent's death, and (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under § 2036, § 2037, § 2038, or § 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of the decedent's death, the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

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 2037 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 after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be

obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds five percent of the value of such property.

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.

In the present case, the distribution, management, and termination provisions of the Subtrusts will be substantially similar to the current distribution, management, and distribution provisions of the respective Trust. Accordingly, based on the facts submitted and the representations made, the division of Trust 1 and Trust 2 will not cause any property of Trust 1, Trust 2, or the Subtrusts to be includible in the gross estate of any beneficiary of any such trust under §§ 2035 through 2038.

Ruling 6:

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

In this case, the beneficiaries of the Subtrusts will have substantially the same interests after the proposed division that they had as beneficiaries under Trust 1 and Trust 2. Because the beneficial interests, rights, and expectancies of the beneficiaries

are substantially the same, both before and after the proposed division, no transfer of property will be deemed to occur as a result of the division. Accordingly, based on the facts submitted and the representations made, we conclude that the division of Trust 1 and Trust 2, as described above, will not result in a transfer by any beneficiary of Trust 1, Trust 2, or the Subtrusts that will be subject to federal gift tax under § 2501.

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 taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

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,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of this letter for § 6110 purposes