

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201908004**

Release Date: 2/22/2019

Index Number: 671.00-00, 2501.00-00,
2514.00-00, 2041.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-113312-18

Date:

October 10, 2018

Re:

Legend:

Date =
Grantor =
Child =
Individual A =
Individual B =
Individual C =
Individual D =
Personal Representative =
Trustee =
Power of
Appointment Committee =

Lifetime Beneficiaries =

Trust =

State =

Dear :

This letter responds to your authorized representative's letter of April 14, 2018, requesting rulings under §§ 671, 2501, 2514 and 2041 of the Internal Revenue Code.

The facts submitted and representations made are as follows. On Date, Grantor created Trust, an irrevocable trust, for the benefit of Grantor, Child, Individual A, Individual B, Individual C and Individual D (Lifetime Beneficiaries). Child is a minor. Grantor is the only donor of all property contributed to Trust. A corporate trustee, Trustee, is the trustee of Trust. Grantor represents Trust has been a domestic trust for since the time of its creation and is intended to be a domestic trust as defined in § 7701(a)(30)(e). Trust is situated in, and governed by the law of State.

Article Five, Section 5.01 of Trust provides that during Grantor's lifetime, Trustee must retain all contributions to Trust in a single trust for the benefit of the Lifetime Beneficiaries. Further, pursuant to Section 5.02 of Article Five, Trustee must not make any distributions except as appointed by Grantor or the Power of Appointment Committee (Committee) as follows: During Grantor's lifetime, Grantor may appoint trust principal (including the whole thereof) outright or in trust to or for the benefit of any one or more of my Lifetime Beneficiaries as Grantor deems advisable at any time and from time to time for the beneficiary's health, education, maintenance, or support. (Grantor's Sole Power). Grantor may not exercise this power to appoint any interest in trust to Grantor, Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. Grantor holds this power in a non-fiduciary capacity.

Section 5.02(b)(1) provides that during Grantor's lifetime, a majority of the Committee members, with Grantor's 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 Grantor or the Lifetime Beneficiaries for any purpose at any time and from time to time (Grantor's Consent Power).

Section 5.02(b)(2) provides that during Grantor's lifetime, the Committee members, other than Grantor, 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 Grantor or the Lifetime Beneficiaries for any purposes at any time and from time to time (Unanimous Member Power).

Section 5.03 provides that, during Grantor's lifetime, if at any time the Committee ceases to exist, Trustee may (but is not required to) distribute income or principal to the Lifetime Beneficiaries, other than Grantor, as follows: (a) Independent Trustee may distribute any portion of Trust property outright or in trust to or for the benefit of any Lifetime Beneficiary as Independent Trustee determines advisable for any purpose, including distribution of all or part of the trust principal to fund a beneficiary's business

ventures, investment ventures, or charitable giving. An Interested Trustee must not make distributions from Trust. Independent Trustee is defined as any trustee who is not an Interested Trustee. An Interested Trustee is defined as a trustee who is a transferor or beneficiary, is related or subordinate to a transferor or beneficiary, can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor, or can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

Section 5.03(a) also provides that any net income not distributed must be accumulated and added to principal.

Section 5.03(d) provides that under no circumstances may Trustee make any distribution to any beneficiary in a manner that would discharge any of Grantor's legal obligations.

Section 5.05 provides that upon Grantor's death, Grantor may appoint the balance of Trust to any one or more persons or charities qualified under § 2055 in equal or unequal proportions and on any terms or conditions Grantor designates. Grantor may not exercise this power for the purpose of discharging Grantor's legal obligations or otherwise for Grantor's pecuniary benefit and may not exercise this power to appoint any interest in Trust to Grantor, Grantor's estate, Grantor's creditors or the creditors of Grantor's estate (Grantor's Testamentary Power of Appointment). Further, Grantor may not exercise this power of appointment to create another power of appointment that, under any applicable law, can be validly exercised to postpone the vesting of any estate or interest in the property subject to the power, for a period ascertainable without reference to the first power of appointment.

Article Six, Section 6.01 provides that in default of Grantor's exercise of Grantor's Testamentary Power of Appointment, Trustee must distribute ten percent of the remaining trust property in equal shares to each member of the Committee, other than Grantor. Trustee shall administer the share for each beneficiary in a separate trust for the benefit of the beneficiary, as provided in Section 6.01. In addition, Trustee must distribute ten percent of the remaining trust property to one or more charities supported by Grantor during Grantor's lifetime. Trustee, in Trustee's sole discretion, may determine the charities, amounts, and charitable purposes of such distributions. Each charitable organization must be a charity of a type described in § 2055(a). Finally, Trustee must allocate the balance of the remaining trust property among Grantor's descendants as provided in Section 6.02. Trustee, in Trustee's sole discretion, may determine the beneficiaries, amounts, shares, and interests of the allocations, but must administer the allocation to a descendant as provided in Section 6.02.

Section 5.02 of Article Five also provides that any member of the Committee may resign as a member without prior approval of any court or the consent of any person. However, at all times there must be at least three members of the Committee in addition to Grantor. If at any time there are fewer than three members serving on the Committee, then the Committee automatically ceases to exist, and all trust distributions are governed under Section 5.03. Further, pursuant to Section 5.02(b)(1) and (2), as stated above, the Committee only has the authority to appoint under the Grantor Consent Power and the Committee Unanimous Member Power only during Grantor's lifetime.

Article Five, Section 5.02(b) provides that the members of the Committee include Grantor, Child, when Child reaches age 18, Individual A, Individual B, Individual C, Individual D, and Personal Representative until Child reaches age 18. Committee will cease to exist upon Grantor's death. Further, Committee members exercise their powers of appointment in a nonfiduciary capacity.

Article Eight, Section 8.01 provides that whenever Trust authorizes or directs Trustee to make a net income or principal distribution to a beneficiary, Trustee may apply any property that otherwise could be distributed directly to the beneficiary for their benefit or to some other qualified trust, except to make a discretionary distribution to Grantor, or any trust where Grantor is a beneficiary, or to any trust which is a grantor trust as to Grantor under §§ 672 through 679.

You have requested the following rulings:

1. As long as the Power of Appointment Committee is serving, no portion of the items of income, deductions and credits against tax of Trust shall be included in computing under § 671 the taxable income, deductions, and credits of Grantor or any other member of the Committee.
2. The contribution of property to Trust by Grantor is not a completed gift subject to federal gift tax.
3. Any distribution of property by the Committee from Trust to 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 the Trust, other than Grantor, will not be a completed gift by any member of the Committee, other than Grantor.

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.

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, that 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 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 power in § 674(b)(5) 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 to 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 and representations submitted, we conclude an examination of Trust reveals none of the circumstances that would cause Grantor 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 the 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 Grantor under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor 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.

RULING 2

Section 2501(a)(1) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident. 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, a part thereof or interest therein, of which the donor has so parted with dominion and control as to leave the donor no power to change its disposition, 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 to another 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 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 himself having 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 and the entire value of the transferred property is subject to the gift tax.

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 co-holder 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'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. Commisisoner*, 37 T.C. 897 (1962). See also *Estate of Goelet v. Commissioner*, 51 T.C. 352 (1968).

In this case, Grantor retains 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. Under § 25.2514-3(b)(2), a taker in default has an adverse interest. However, the Committee members are not takers in default for purposes of § 25.2514-3(b)(2). They are merely co-holders of the power. Under § 25.2514-3(b)(2), a co-holder 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. In this case, the Committee members only have the authority to exercise their powers under the Grantor's Consent Power and Unanimous Member Power during Grantor's lifetime. Accordingly, the Committee members do not have interests adverse to Grantor under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). Therefore, Grantor is considered as possessing the power to distribute income and principal to any beneficiary himself because he retained the Grantor's Consent Power.

If the Committee ceases to exist, Trust provides that an Independent Trustee has the power to distribute income or principal to the Lifetime Beneficiaries. However, the Independent Trustee's power is not a condition precedent to Grantor's consent power. Grantor's Consent Power over income and principal is presently exercisable and not subject to a condition precedent. Thus, the Independent Trustee's power to distribute income and principal does not cause the transfer of property to be complete with respect to the income or principal interest in Trust for federal gift tax purposes. Therefore, Grantor is considered as possessing the power to distribute income and/or principal to any beneficiary himself because he retained the Grantor's Consent Power.

Grantor also retains 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 Grantor the power to change the interests of the beneficiaries. Even though Grantor's power is limited by an ascertainable standard, i.e., health, education, maintenance and support, Grantor's power is not a fiduciary power. Accordingly, the retention of the Grantor's Consent Power and the Grantor's Sole Power causes the transfer of property to Trust to be wholly incomplete for federal gift tax purposes.

Further, Grantor retains Grantor's Testamentary Power to appoint the property to any one or more persons or charities qualified under § 2055, other than Grantor's estate, Grantor's creditors, or the creditors of Grantor's estate. Under § 25.2511-2(b), 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 in Trust 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 Grantor's powers. Grantor's power over the income and principal is presently exercisable and not subject to a condition precedent. Grantor retains dominion and control over the income and principal of Trust until the Committee members exercise their Unanimous Member Power. Accordingly, the retention of this power does not cause Grantor's transfer of property to Trust to be complete 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 Grantor is not a completed gift subject to federal gift tax.

RULINGS 3, 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 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 his estate, or expressly not exercisable in favor of the possessor or his creditors, or possessor's estate or the creditors of his 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 co-holder of a power 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 co-holder 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 25.2514-1(b)(2) provides that for purposes of §§ 25.2514-1 through 25.2514-3, the term "power of appointment does not include powers reserved by a donor to himself. No provision of § 2514 or of § 25.2514-1 through 25.2514-3 is to be construed as in any way limiting the application of any other section of the Code or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in the amount of his gifts to the extent it would be includible under § 2511 or other provisions of the Code.

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)(i) provides 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 the creator of the power, such power shall not be deemed a general power of appointment.

Section 2041(b)(1)(C)(ii) provides, however, that in the case of a power of appointment created after October 21, 1942, 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 co-holder of a power of appointment has no adverse interest merely because of his joint possession of the power nor merely because he is a Lifetime appointee under a power. However, a co-holder 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.

Section 20.2041-1(b)(2) provides that for purposes of §§ 20.2041-1 through 20.2041-3, the term "power of appointment" does not include powers reserved by the decedent to himself within the concept of §§ 2036 to 2038. (See §§ 20.2036-1 to 20.2038-1.) No provision of § 2041 or of §§ 20.2041-1 to 20.2041-3 is to be construed as in any way limiting the application of any other section of the Code or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in his gross estate to the extent it would be includible under § 2033 or some other provision of part III of subchapter A of chapter 11.

The powers held by the Committee members under the Grantor's Consent Power are powers that are exercisable only in conjunction with the creator, Grantor. 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 are not general powers 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 Grantor, pursuant to the exercise of these powers, the Grantor's Consent Power and the Unanimous Member Powers, are not gifts by the Committee members. Instead, such distributions are gifts by Grantor. Further, any distribution from Trust to Grantor is merely a return of Grantor's property. Further, any distributions pursuant to Grantor's Sole Power are gifts by Grantor. See §§ 2511 and 25.2514-1(b)(2).

Based on the facts submitted and representations made, we conclude that any distribution of property by the Committee from Trust to Grantor will not be a completed gift, subject to federal gift tax, by any member of the Committee. A distribution to Grantor is merely a return of capital to Grantor. Further, we conclude that any distribution of property by the Committee from Trust to any beneficiary of Trust, other than Grantor, will not be a completed gift subject to federal gift tax, by any member of the Committee.

Finally, we conclude that the powers held by the Committee are not general powers of appointment for purposes of § 2041(a)(2) and, accordingly, 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. However, upon Grantor's death, the Trust property will be includible in Grantor's gross estate. See §§ 20.2041-1(b)(2) and 20.2036-1 to 20.2038-1.

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).

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

Sincerely,

Lorraine E. Gardner

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes