Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.7-PLR-108159-98
Date:
February 26, 1999

Re:

Legend

Taxpayer:

TIN:

Trust:

Country X:

Date 1:

We received a request for ruling and subsequent correspondence submitted on your behalf by your authorized representative. This letter is in reply to that request.

Taxpayer is a citizen and resident of the United States. Taxpayer proposes to settle Trust under the laws of Country X. Trustee of Trust will be an unrelated corporate trustee. Trustee will have no beneficial interest in Trust.

During the term of Trust, Trustees are to pay to and among the beneficiaries such amounts of income and principal as Trustee, in its sole discretion, determines. Trustees are to divide Trust into separate funds for separate groups of beneficiaries. All of the beneficiaries are citizens and residents of the United States. On termination of Trust, Trustees are to distribute Trust assets to the then living beneficiaries of the separate funds .

Article 16 of Trust Instrument provides that prior to Date 1, Taxpayer may alter, amend, modify, or revoke Trust. On Date 1, Trust will be irrevocable.

Article 17 of Trust Instrument provides that Trustees are to distribute from Trust property any amount that is necessary to satisfy any federal or state income tax liability incurred by Taxpayer pursuant to the laws of the United States of America as a result of the establishment of Trust. Under Article 17 of Trust Instrument, Trustees are to distribute directly to the Internal Revenue Service of the United States of America (or similar state agency) an amount sufficient to satisfy the income tax liability of Taxpayer attributable to the income of Trust, or any corporations or entities comprised within Trust. The amount distributed under this provision shall be equal to the amount that Taxpayer's personal income tax liability payable to the Internal Revenue Service (or similar state agency) exceeds Taxpayer's personal income tax liability computed as if he were not the owner or the settlor of any portion of Trust.

Amounts distributed to the Internal Revenue Service of the United States of America (or similar state agency) to satisfy the income tax liability of Taxpayer attributable to Trust are to be distributed from Trust's separate funds in proportion to the funds respective values immediately following the establishment of Trust. Further, Trustees are obligated to make such distributions only to the extent that there are sufficient funds available in Trust for that purpose.

Article 18 of Trust Instrument provides that except as provided in Article 16 and 17 of Trust Instrument, no power conferred in Trust Instrument is exercisable for the benefit of Taxpayer or Taxpayer's spouse. Further, no provision of Trust Instrument shall operate to cause any part of the capital or income of Trust to become payable to or applicable for the benefit of Taxpayer or Taxpayer's spouse.

Taxpayer requests a ruling that the tax distributions described in Article 17 of the governing instrument, if made, will represent tax payments allocable to the Trust, and will not constitute the retention of the right to income under § 2036(a).

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 the case of a bona fide sale for an 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 that 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 enjoy the property or the income from the property.

In the present case, Trustee is required to distribute to the Internal Revenue Service or any similar state agency income or principal to satisfy Taxpayer's income tax liability attributable to Trust. The amount of the distribution is equal to the excess of Taxpayer's personal income tax liability over Taxpayer's personal income tax liability computed as if Taxpayer was not the owner of any portion of Trust. Because the distributions on Taxpayer's behalf represent tax payments allocable to Trust, the distributions do not constitute the retention of the right to income as described in § 2036(a). Therefore, we conclude that the requirement that Trustees make the specified distributions will not cause Trust corpus to be included in Taxpayer's gross estate under § 2036. We note, however, that Taxpayer would have retained an income interest for purposes of § 2036(a) if Trustee were required to make distributions to reimburse Taxpayer for any tax liability not attributable to Trust (e.g., income tax on his personal salary or capital gains on personal investments).

The ruling contained in this letter is based upon information and representations submitted by 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 ruling, it is subject to verification on examination.

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. In addition, we express no opinion concerning any other rights or interests of Taxpayer in Trust income or principal that would make property includible in Taxpayer's gross estate under § 2036.

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

PLR-108159-98

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,

(signed) Joseph H. Makurath

Joseph H. Makurath
Senior Technician Reviewer
Assistant Chief Counsel (P&SI)