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January 27, 1999

X =  
Y =  
Z =  
A =  
B =  
C =  
Trust =  
Year 1 =  
Year 2 =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Date 7 =  
x =

Dear

This letter is in response to your letter of July 14, 1998,  
and previous correspondence, submitted on behalf of A,

conservator of the estate of X, requesting a ruling under section 1014 of the Internal Revenue Code.

The information submitted states that X and Y were married in Year 1. During their marriage, X and Y acquired a significant amount of stock. As of Date 1, a portion of X and Y's stock was held in a B account (B Account) under X's name. Approximately x % of the stock held in the B Account consisted of B stock (B Stock). On Date 2, X and Y executed a marital property declaration and agreement confirming that all property they held, either separately or jointly, was community property. On Date 3, the C county superior court determined that X was no longer competent to manage his personal needs, and a temporary conservatorship for X was established. Y was appointed temporary conservator of X's person. Early in Year 2, Y was hospitalized.

On or about Date 4, Y's son, Z, acting under a durable power of attorney, transferred half the stock in the B Account, including half the B Stock, to the Trust. This transfer was made without the written consent of X or of X's court appointed conservator. The instrument provides that assets transferred to the Trust are Y's separate property. Until this transfer, the Trust was unfunded. On Date 5, the C county superior court determined that X was not competent to manage his assets and appointed A as permanent conservator of X's estate. On Date 6, Y died.

On Date 7, the C county superior court determined that as of Date 6, the date of Y's death, the property belonging to X and Y, including assets remaining in the B Account and those transferred from this account to the Trust, constituted community property. Therefore, the C county superior court concluded that the transfer to the trust did not result in converting the assets to Y's separate property.

A represents that at least one-half of the community property interest in the B stock is includible in determining the value of Y's gross estate.

Section 1014(a)(1) of the Code provides that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent will, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(6) of the Code provides that in the case of decedents dying after December 31, 1947, the basis of property which represents the surviving spouse's one-half share of

community property receives a basis equal to its fair market value at the date of the decedent's death, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate.

Section 852(a) of the Family Code provides that a transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

Based solely on the facts and the representations submitted that the B stock was community property of X and Y, we conclude that the basis of the B Stock, including X's one-half community property share of it, is its fair market value as of Y's death.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described under any other provision of the Code. In particular, no opinion is expressed regarding the fair market value of the B Stock at the time of Y's death. Additionally, if the C county superior court's order of Date 7, with regard to the community property status of the B stock, should be reversed, or in any manner ceases to be in effect, then this ruling shall be null and void.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to A.

Sincerely yours,

J. THOMAS HINES  
Senior Technician Reviewer  
Branch 2  
Office of the Assistant  
Chief Counsel  
(Passthroughs and  
Special Industries)

Enclosures: 2  
Copy of this letter  
Copy for section 6110 purposes