

Internal Revenue Service

Department of the Treasury

Index Number: 2601.03-01, 1001.00-00,
2501.00-00, 1223.00-00, 2036.00-00
Number: **199951028**
Release Date: 12/23/1999

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4- PLR-115989-98

Date:

September 28, 1999

LEGEND

- Donor =
- Trust =
- TIN:
- Company =
- Trustee 1 =
- Trustee 2 =
- Trustee 3 =
- State Statutes =

:

This is in response to your letter of March 29, 1999, and prior correspondence, in which you requested rulings concerning the income, gift, estate, and generation-skipping transfer tax consequences of a proposed partition of a trust.

Donor created Trust in 1982 for the benefit of his issue and the spouses of his issue. Trust's corpus consists primarily of stock in Company. Trust is irrevocable and Trustee 1, Trustee 2, and Trustee 3 are the current trustees of Trust.

Article 1.02 (4) provides that the beneficiaries of the trust are identified by Classes. Article 1.02(4)(i) provides that the Class One Beneficiaries shall consist of Donor's children. Article 1.02(4)(ii) provides that the Class Two Beneficiaries shall consist of Donor's grandchildren. Article 1.02 (4)(iii) provides that the Class Three Beneficiaries shall consist of Donor's great-grandchildren. Article 1.02(4)(iv) provides that the Class Four Beneficiaries shall consist of the spouses of Donor's children. Article 1.02(4)(v) provides that the Class Five Beneficiaries shall consist of the spouses of Donor's grandchildren. Article 1.02(4)(vi) provides that the Class Six Beneficiaries shall consist of the spouses of Donor's great-grandchildren.

Article 2.02 provides that Trust is irrevocable; however, Donor or any other person shall have the power to contribute additional properties to the trust estate at any time.

Article 3.01(1) provides that, in each year during which a contribution is made to the trust, the amount of such contribution on the date of the contribution shall be allocated equally among each of the members of Classes One, Two, Three, Four, Five, and Six living on the date of the contribution, and each member of Classes One, Two, Three, Four, Five, and Six shall have the absolute right, on or before December 31 of the year in which the contribution is made, exercisable either personally or through a legally appointed guardian, to withdraw from the principal of the trust estate assets having a value as of the date or dates of withdrawal that shall not exceed with respect to each contributor the lesser of \$10,000, if the contributor is unmarried on the date of the contribution, or \$20,000.

Article 3.01 (2) provides that the power to make distributions from the trust of income and any principal not withdrawn and not capable of being withdrawn pursuant to § 3.01(1) shall be vested solely in the trustees possessing the power of discretionary distributions under Article 4.01. All income not distributed shall be accumulated and added to principal. Distributions may be made to one, some or all living members of any of Classes One, Two, Three, Four, Five, and Six in such proportions and amounts, equal or unequal, as the trustees possessing the power of discretionary distributions under Article 4.01 deem advisable, in their sole discretion (and without regard to whether any portion of the trust assets, upon being contributed to the trust, was allocated among the members only of one or more particular classes). The power to make distributions shall include the power to make complete distribution of all the trust assets at any time and thereby terminate the trust.

Article 4.01 provides that the trustees “possessing the power of discretionary distributions” shall be:

all those trustees acting hereunder from time to time except any trustee (a) who by possessing a discretionary power to distribute or withhold any income or principal from any trust created hereunder would be a younger generation beneficiary having a present power, (b) to whom income or principal may be currently distributed from any trust created hereunder or who has the legal obligation to support a beneficiary to whom income or principal may be currently distributed from any trust created hereunder or (c) who, with respect to me or to any other contributor to any trust hereunder, is a ‘related or subordinate party’ within the meaning of Section 672 (c) of the Internal Revenue Code.

Article 4.02 provides that, if Trust has not terminated pursuant to other provisions of the trust instrument, the trust shall terminate twenty-one (21) years after the death of

the survivor of all Donor's issue who are living at the execution of the agreement and the spouses of such issue. Any trust assets governed by a statute or rule of law under which such assets could not validly remain in trust until this date shall be distributed on the last date on which such assets can validly remain in trust. On termination, pursuant to this paragraph, distributions shall be made among the living members of classes One, Two, Three, Four, Five, and Six in such amounts as the trustees deem advisable.

Article 4.04 provides that any distributions from Trust may be made directly to the beneficiary or by expending the payments for the beneficiary's benefit or in the case of a beneficiary who is a minor or under other legal disability to a legal guardian or conservator; provided that (a) no such payment or distribution shall be made to a guardian or conservator if the payment would cause such person to become a younger generation beneficiary having a present interest or a present power in the trust and (b) no distributions may be made to or on behalf of a beneficiary that discharges any legal obligation of another person (to support such beneficiary or otherwise). Further, distributions from the trust may, in the sole discretion of the trustees, be retained for the sole benefit of such beneficiary in a separate trust (referred to as a "Distributions Trust" the terms of which are specified in the Trust instrument).

Article 5.03(4) provides that any trustee has the right to resign by written instrument. In addition, the individual trustee or trustees may, at any time, appoint one or more individual trustees or a corporate trustee, or any combination thereof, as a co-trustee or co-trustees.

Article 501B.15 of State Statutes provides that a trustee may, without the approval of any court, divide a trust, before or after it is funded, into two or more separate trusts if the trustee determines that dividing the trust is in the best interests of all persons interested in the trust and will not substantially impair the accomplishment the purposes of the trust.

The trustees propose to divide Trust into three separate trusts, Family 1982 Trust No. 1, Family Trust 1982 No. 2, and Family 1982 Trust No. 3. Each trust will be governed by the terms of the original Trust and an Operating Agreement (discussed below) that will be executed when Trust is divided. With respect to Family 1982 Trust No. 1, Trustee 1 and Trustee 2 will resign as trustees of this trust. The remaining trustee, Trustee 3, may make discretionary distributions to one, some or all living members of any of Classes One through Six in any proportions and amounts. If not terminated sooner, Family 1982 Trust No. 1 will terminate twenty-one years after the death of the last to die of all potential individual beneficiaries in all of classes One through Six living on the date of the execution of Trust.

With respect to Family 1982 Trust No. 2, Trustee 1 and Trustee 3 will resign as trustees of this trust. The remaining trustee, Trustee 2, may make discretionary distributions to one, some or all living members of any of Classes One through Six in

any proportions and amounts. If not terminated sooner, Family 1982 Trust No. 2 will terminate twenty-one years after the death of the last to die of all potential individual beneficiaries in all of classes One through Six living on the date of the execution of Trust.

With respect to Family 1982 Trust No. 3, Trustee 2 and Trustee 3 will resign as trustees of this trust. The remaining trustee, Trustee 1, may make discretionary distributions to one, some or all living members of any of Classes One through Six in any proportions and amounts. If not terminated sooner, Family 1982 Trust No. 3 will terminate twenty-one years after the death of the last to die of all potential individual beneficiaries in all of classes One through Six living on the date of the execution of Trust.

With respect to all three trusts, if the trust terminates on the expiration of 21 years after the death of the last to die of all potential individual beneficiaries in all of Classes One to Six living on the date the trust was executed, the trust corpus is to be distributed as provided in Article 4.02 of Trust, i.e. , among the living members of Class One, Two, Three, Four, Five, and Six in such amounts as the trustee deems advisable.

In addition to the partition, each of the trustees intend to enter into an operating agreement (Operating Agreement) and Donor will also become a party to the agreement. The Operating Agreement provides that, following the division of Trust, the trustees intend to coordinate certain of their activities in order to preserve the equity and voting position with respect to the stock in Company that was held by Trust before the division.

Paragraph 2 of the Operating Agreement provides that all of the voting rights associated with the shares of Company held by the trusts shall be exercised as follows:

- a. All of the Company stock held in the trusts shall be voted as a block in connection with any matter coming before the shareholders of Company.
- b. The voting of the block in connection with any matter coming before shareholders of Company shall be determined according to the following procedures:
 - (i) For each of the trusts there shall be determined the number of votes associated with the shares of Company held by the Trust that may be cast in connection with such matter coming before the shareholders of Company. The sum of the trust votes for the trusts is referred to herein as the aggregate votes.

(ii) A majority of the aggregate votes shall control how the block is voted. For such purposes, the trustee of a trust shall have a number of votes equal to the trust votes for such trust.

Paragraph 5 of the Operating Agreement provides that no trust shall sell, exchange, distribute or otherwise transfer during any calendar year more than 3.5 percent of Company stock held by the trust at the beginning of the year without the approval of the trustees of the other trusts. In addition, any sale shall be subject to the provisions of Paragraph 6 of the Operating Agreement.

Paragraph 6 provides that any trust wishing to sell or exchange any Company stock (or any distributee from any Trust who wishes to sell any stock that was at any time held by any of the trusts), whether to a "Permitted Transferee" or a "non-Permitted Transferee" as defined in Article 10 of the Bylaws of Company shall give advanced written notice to the Trusts and all issue of Donor who will have options to acquire the stock. Afterwards, the parties described in Paragraph 6(a) and 6(b) shall have the option to purchase the shares of stock to the maximum extent allowed by Article 10 of the Bylaws of Company. The shares may be purchased at a price equal to the lesser of the per-share price in the purchase offer and the value per share determined by an appraisal on behalf of the ESOP of Company.

Paragraph 6(a) provides that the child of Donor for whose family the Trust that has proposed to sell or exchange the stock in Company is primarily administered or that previously distributed the stock to a distributee who has proposed to sell or exchange the stock, shall have first option to purchase the shares. If the child is not living, the child's issue shall have the first option to purchase the shares on a per-stirpital basis. Any such option may be assigned in whole or in part by its holder to any issue of the child, any trust that has one or more issue of the child as its primary beneficiaries, or any other entity that is directly or indirectly controlled by one or more such issue.

Paragraph 6(b) provides that, to the extent that the first option provided for in Paragraph 6(a) is not exercised within 30 days after providing the notice required above, then the trusts, other than the trust that has proposed to sell or exchange the Company stock or that previously distributed Company stock to a distributee who has proposed to sell or exchange the Company stock, shall each have the second option to purchase one-half the remaining portion of the stock, and, if one such trust does not exercise its second option to purchase the remaining portion of the stock within 30 days of the expiration of the first option, the other trust shall have the option to purchase the remaining portion of the stock within 30 days of the expiration of the second option.

Paragraph 6 further provides that, if all of the preceding options are not exercised with respect to the Company stock within the time allotted, the proposed sale or exchange may proceed at the price and on the terms and conditions stated in the bona fide purchase or exchange offer but must be completed within 150 days after the

notice. Donor agrees to exercise any authority that he may have under Article 10 of the Bylaws of Company (discussed below) to preserve the order of priority of the options set forth in the Operating Agreement.

Article 10 of Company's Bylaws pertains to the sale of Company stock to a "non-Permitted Transferee." If any shareholder transfers or attempts to transfer any shares of common stock to a non-Permitted Transferee, the transfer gives rise to certain the purchase options. Article 10 lists the individuals that have the option to purchase the stock and also lists the order and time that the option may be exercised. Generally, the family member who is most closely related to the transferee has the first option to purchase the stock. If the family member fails to exercise the option within the allowed time, other more remote family members have the right to purchase the stock and, if they fail to purchase the stock, Company has the right to purchase the stock. If Company fails to purchase the stock, the stock may be sold to a non-Permitted Transferee. If Donor is classified as a "transferor" as that term is defined in Article 10, he can specify a different priority with respect to the order of the parties that may exercise the option to purchase the stock. Under the bylaws, Donor is classified as a transferor, and therefore, has the power to modify the priority of the right of first refusal.

The trustees have represented that between December 17, 1985, and January 12, 1988, transfers were made to Trust and that all of the transfers qualified for the gift tax annual exclusion provided in § 2503(b) of the Internal Revenue Code. Furthermore, the trustee have represented that the transfers, which were subject to the right of withdrawal specified in Article 3.01(1) lapsed, and that, at the time of the lapse, the amount that each individual could withdraw was less than 5 percent of the value of the assets of Trust.

The trustees have requested the following rulings:

1. The proposed division and resignations will not cause any distribution from, or termination of any interests in, the Trust to be subject to the generation-skipping transfer tax under § 2601.
2. The proposed division and resignation will not cause the Trust, the Family Trusts or any beneficiary to recognize any gain or loss from a sale or other disposition of property under § 61 or § 1001.
3. The proposed division and resignation will not cause any beneficiary to be considered as having made a taxable gift and will not constitute a taxable gift to any beneficiary under § 2501.
4. The basis and holding periods in each asset transferred to the Family Trusts from the Trust will, for tax purposes, be the same as the Trust's basis and holding period in each such asset at the time of transfer under §§ 1015 and 1223.

5. The Donor's participation as a party to the Operating Agreement is not a retained right or power within the meaning of §§ 2036 and 2038.

Ruling Request 1

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip person." Section 2611 defines a generation-skipping transfer as a taxable termination, a taxable distribution, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the generation-skipping transfer tax (GSTT) shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, the Trust is considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 apply.

Section 26.2601-1(b)(1)(iv)(A) provides that, if an addition is made after September 25, 1985, to an irrevocable trust that is excluded from chapter 13 by reason of § 26.2601-1 (b)(1), a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13. If an addition is made, the trust is thereafter deemed to consist of two portions, a portion not subject to chapter 13 (the non-chapter 13 portion) and a portion subject to chapter 13 (the chapter 13 portion), each with a separate inclusion ratio (as defined in § 2642(a)). The non-chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985. The applicable fraction (as defined in § 2642(a)(2)) for the non-chapter 13 portion is deemed to be one and the inclusion ratio for such portion is zero. The chapter 13 portion of the trust represents the value of all additions made to the trust after September 25, 1985. The inclusion ratio for the chapter 13 portion is determined under § 2642. Section 26.2601-1(b)(1)(iv)(A) requires separate portions of one trust only for purposes of determining inclusion ratios.

In the present case, the trustees have represented that between December 17, 1985, and January 12, 1988, transfers were made to Trust. Under § 26.2601-1(b)(1)(iv)(A), a pro rata portion of Trust is subject to the provisions of chapter 13 and Trust is deemed to consist of two portions. The portion of Trust that is attributable to the additions made after September 25, 1985, is subject to chapter 13 and this portion of the trust has a separate inclusion ratio determined under § 2642.

Under § 2631(a), in computing the GST tax an individual is allowed a lifetime exemption of \$1,000,000, adjusted for inflation as prescribed in § 2631(c).

In general, under § 2602, the amount of GST tax imposed is determined by multiplying the taxable amount by the applicable rate. Under § 2641, the applicable rate is defined as the product of the maximum federal estate tax rate, and the inclusion ratio with respect to the transfer. The inclusion ratio with respect to any property transferred in trust is defined in § 2642(a)(1) as the excess of 1 over the applicable fraction determined for the trust. Under § 2642(a)(2), the applicable fraction is generally defined as a fraction: (A) the numerator of which is the amount of GST exemption allocated to the trust; and (B) the denominator of which is the value of the property transferred to the trust.

Section 2642(c)(2)(A), in effect at the time of the transfers, provided that any non-taxable gift that is not a direct skip and that is made to a trust shall not be taken into account under § 2642(a)(2)(B). Section 2642(c)(2)(B), in effect at the time of the transfers, provided that in the case of any non-taxable gift referred to in § 2642(c)(2)(A) that is the first transfer to the trust, the inclusion ratio for the trust shall be zero.¹ Section 2642(c)(3) defines a non-taxable gift as any transfer of property to the extent the transfer is not treated as a taxable gift by reason of § 2503(b) (taking into consideration the application of § 2513). The trustees have represented that transfers to Trust were non-taxable gifts under § 2642(c)(3). Assuming the transfers were non-taxable gifts under § 2642(c)(3), the transfer to the trust were excluded from the denominator of the applicable fraction.

The non-chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985, and any increase or decrease in the value of the assets attributable to the assets. The applicable fraction for this portion is deemed to be one, and therefore, the inclusion ratio for this portion of Trust is zero.

Under the plan of partition, Trust will be partitioned into three trusts, Family 1982 Trust No. 1, Family Trust 1982 No. 2, and Family 1982 Trust No. 3. Trust currently has three trustees, Trustee 1, Trustee 2, and Trustee 3. Each of the current trustees will resign as trustee of two of the three partitioned trusts and, after the partition, each of the trustees will emerge as a trustee of one of the partitioned trusts. Furthermore, after the partition, each of the trusts will continue to be governed by the terms of Trust and distributions from each of the trusts may be made to any beneficiary described in Article 1.02(4).

¹Section 2642(c) was amended by the Technical and Miscellaneous Revenue Act of 1988, 1988-3 C.B. 1, 226.

Based on the fact submitted and the representations made, we conclude that the proposed division and resignations will not alter the quality, value or timing of interests under the original Trust, as it will not confer any additional powers or beneficial interests upon any of the beneficiaries and will not create any additional generation-skipping transfers or increase the amount of generation-skipping transfers. Accordingly, the proposed division and resignations will not cause any distribution from, or termination of any interests in, either the non-chapter 13 portion of the Trust or the chapter 13 portion of Trust to be subject to the generation-skipping transfer tax under § 2601.

We note that we are specifically not ruling on whether the transfers to Trust made between December 17, 1985, and January 12, 1988, qualified for the gift tax annual exclusion under § 2503(b).

Ruling Request 2

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

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

A partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest as a result thereof. Thus, neither gain nor loss is realized on the partition. See Rev. Rul. 56-437, 1956-2 C.B. 507.

In Rev. Rul. 69-486, 1969-2 C.B. 159, a non-pro rata distribution of trust property was made in kind by the trustee, although the trust instrument and local law did not give the trustee authority to make a non-pro rata distribution of property in kind. The distribution was effected as a result of a mutual agreement among the trustees and the beneficiaries. Because neither the trust instrument nor local law conveyed authority to the trustee to make a non-pro rata distribution, Rev. Rul. 69-486 held that the transaction was equivalent to a pro rata distribution followed by an exchange between the beneficiaries and was subject to the provisions of §§ 1001 and 1002.

Cottage Savings Ass'n. v. Commissioner, 499 U.S. 554 (1991), concerns the issue of when a sale or exchange has taken place that results in realization of gain or

loss under § 1001. In Cottage Savings, a financial institution exchanged its interests in one group of residential mortgage loans for another lender's interests in a different group of residential mortgage loans. The two groups of mortgage loans were considered "substantially identical" by the agency that regulated the financial institution. In Cottage Savings, at 499 U.S. at 560-561, the Supreme Court concluded that § 1.1001-1 reasonably interprets § 1001(a) and stated that an exchange of property gives rise to a realization event under § 1001(a) if the properties exchanged are "materially different."

In defining what constitutes a "material difference" for purposes of § 1001(a), the Supreme Court stated that properties are "different" in a sense that is "material" to the Code so long as their respective possessors enjoy legal entitlements that are different in kind or extent. Cottage Savings, 499 U.S. at 564-565. The Supreme Court held, at 499 U.S. at 566, that mortgage loans made to different obligors and secured by different homes embodied distinct legal entitlements and that the taxpayer realized losses when it exchanged the loans.

It is consistent with the Supreme Court's opinion in Cottage Savings to find that the interests of the current individual beneficiaries of the three successor Family Trusts, Family 1982 Trust No. 1, Family Trust 1982 No. 2, and Family 1982 Trust No. 3, will not differ materially from their interests in the Trust. The proposed transaction will not change the beneficial interests of the individual beneficiaries, each of whom will remain a potential distributee of all the same assets after the proposed transaction as before, although a distinct portion of those assets will be held in each family trust. The proposed transaction is similar to the kinds of transactions discussed in Rev. Rul. 56-437 since the Trust is to be partitioned, but all other provisions of the Trust will apply to determine the beneficiaries' respective interests in the three successor Family Trusts. Thus, the transaction will not result in a material difference in the kind or extent of the legal entitlements enjoyed by the beneficiaries. The conclusion that the proposed partition will not result in a material change is unaffected by the fact that it is anticipated that after the partition the trustees of the successor Family Trusts may cause the trusts to invest in dissimilar assets, or by the fact that it is anticipated that, after the partition, the trustee of each successor family trust will choose to make discretionary distributions only to members of the family of the Donor's child for whom that trust is primarily administered.

Further, based on the Trust's representation that none of Trustee 1, Trustee 2, and Trustee 3 is a related or subordinate party, within the meaning of § 672(c), to the Donor, any of the Donor's issue, or the spouse of any of the Donor's issue, the fact that the trustees of the Trust will selectively resign as trustees of the Family Trusts, so that each new family trust will have a sole trustee who was suggested as a successor trustee of the Trust by the Donor's child for whose family that Family Trust is primarily administered, will not have any consequences under §§ 61 or 1001. Each sole trustee

of a Family Trust will be required to continue to exercise the same standard of fiduciary responsibility as the trustee previously exercised with respect to the Trust.

Finally, the execution of the Operating Agreement by each Family Trust's trustee and the Donor will not have any consequences under §§ 61 or 1001.

Accordingly, we conclude that the Trust, the three successor Family Trusts (Family 1982 Trust No. 1, Family Trust 1982 No. 2, and Family 1982 Trust No. 3), and the beneficiaries of any of these trusts will not, as a result of the proposed transactions, realize gain or loss under § 1001 or have income under § 61.

Ruling Request 3

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 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 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

In this case, the interest of each beneficiary will remain the same after the proposed division. Accordingly, based on the fact submitted and the representations made, we conclude that the proposed division and trustee resignations will not cause any beneficiary to be considered as having made a taxable gift under § 2501.

Ruling Request 4

Section 1015(b) provides that, if a property is acquired by a transfer in trust (other than by 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 the transfer.

Section 1.1015-2(a) provides that, in the case of property acquired by transfer in trust (other than by a transfer in trust by a 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 upon such transfer under the law applicable to the year in which the transfer was made. In addition, the principles in § 1.1015-1(b) concerning the uniform basis are applicable in determining the basis of property where more than one person acquires an interest in property by transfer in trust. Section 1.1015-1(b) provides that property acquired by gift has a single or uniform basis although more than one person may acquire an interest in the property. The uniform basis of the property remains fixed subject to proper adjustment for items under §§ 1016 and 1017.

Because § 1001 will not apply to the proposed division of Trust, the basis of the assets in the three separate trusts, Family 1982 Trust No. 1, Family Trust 1982 No. 2, and Family 1982 Trust No. 3, will be the same as the basis of the assets currently held in Trust.

Section 1223(2) provides that in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which such property was held by any other person if under Chapter 1 of the Code such property has, for purposes of determining gain or loss from its sale by the taxpayer the same basis in whole or in part in the taxpayer's hands as it would have in the hands of the other person.

As noted above, the basis of the assets held by the three partitioned trusts will be the same as the assets currently held by Trust. Accordingly, under § 1223(2) the holding period of the assets in each of the partitioned trusts will include the holding periods of the same assets in Trust.

Ruling Request 5

Section 2036(a) provides that a decedent's gross estate includes 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 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 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 possess or enjoy the property or the income therefrom.

Section 2038(a)(1) provides that 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 an 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 were any such power is relinquished during the 3-year period ending on the date of the decedent's death.

In this case, as part of the Operating Agreement, Donor has agreed to exercise any authority that he may have under Article 10 of the Bylaws of Company in a manner that will preserve the priority of the options to purchase the shares of Company under the Operating Agreement. Under Article 10 of the Bylaws of Company, if Donor is

classified as the transferor with respect to certain stock of Company and there is an offer to purchase the stock, Donor may specify a different priority with respect to the order of the parties that may exercise the right to acquire the stock. Donor, however, cannot prevent a trust from receiving full and adequate consideration for the stock if a trustee decides to sell all or part of the stock that it holds in Company. Based on the fact submitted and the representations made, we conclude that Donor's participation as a party to the Operating Agreement is not a retained right or power within the meaning of §§ 2036 and 2038.

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(s) requesting it. Section 6110(j)(3) of the Code 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 yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure (1)
Copy for § 6110 purposes