

Trust 1

Trust 1, an irrevocable trust, was executed by First Donor on Date 1. Under Article Second, paragraph (b), of the Trust 1 instrument, the trustees may make discretionary distributions of income, accumulated income, or principal of Trust 1 to or for the benefit of A (First Donor's child) or any of A's descendants in the event of illness, accident, other misfortune, or any emergency, or if, in the trustees' judgment, it is necessary to provide for the beneficiaries' comfortable maintenance, support, or education. Trust 1 will terminate twenty years after the death of the survivor of A, B, and C and all of First Donor's descendants living on Date 1. Upon termination, the remaining Trust 1 principal and undistributed income will be distributed to the descendants of A who have no living ancestor who is a descendant of A, per stirpes.

On the date Trust 1 was executed, First Donor had eleven living descendants consisting of three children (A, B, and C) and eight grandchildren, all of whom are still living. A's child, D, was born on Date 2, after the Trust 1 instrument was executed. Taxpayer is D's child and A's grandchild. As A's descendant, the trustees may, in their discretion, make distributions of income and principal to Taxpayer during the trust term. Further, Taxpayer, as a descendant of A and a surviving child of D, will be entitled to receive a share of the per stirpital portion of the Trust 1 remainder if D dies prior to the termination of Trust 1, and Taxpayer survives. Taxpayer has received discretionary distributions from Trust 1.

Trust 2

Trust 2, an irrevocable trust, was executed by First Donor on Date 3. Under Article Second, Paragraphs A and B, of the Trust 2 instrument, during A's lifetime: (i) one-half of the Trust 2 income is to be accumulated and added to principal; (ii) one-quarter of the remaining income is to be paid to A, and (iii) the balance of the income is to be paid to or for the use of A's children and descendants of deceased children, share and share alike, per stirpes.

Under Article Second, Paragraph G, A is granted a limited power to appoint, by will, the entire Trust 2 principal and any accumulated net income to and among A's spouse, E, and any or all of A's children and descendants of deceased children. To the extent A fails to exercise the power, Trust 2 will be held in further trust and administered as provided in Article Second, Paragraphs C, D, and E.

Under Article Second, Paragraph C, upon A's death, subject to A's exercise of his power of appointment, one-half of the trust income is to be paid to E, A's spouse, during her lifetime, provided that E survives A as his spouse. The remaining trust income (or all of the trust income, if E should predecease A, die after A's death, or not survive A as his surviving spouse) is to be paid to or for the benefit of A's children, share and share alike, with an equal portion to the descendants of any deceased child per stirpes.

Under Article Second, Paragraph E, during the time that E and A's children and their descendants are entitled to receive trust income, the trustee is to distribute trust principal to the beneficiaries in the event of illness, accident, other misfortune, or any emergency, or if, in the trustee's judgment, it is necessary to provide for the beneficiaries' comfortable maintenance and support.

Under Article Second, Paragraph D, subject to A's exercise of his limited power of appointment, Trust 2 will terminate twenty-one years after the death of the last survivor of A, E, and A's children living on Date 3. Upon termination, all of the Trust 2 principal and accumulated income will be distributed per stirpes to A's children and the descendants of any deceased child.

On the date, that First Donor executed Trust 2, A had two children, including D. Thus, D's life is one of the lives measuring the duration of Trust 2. After D's death, to the extent A has not exercised his testamentary limited power to appoint the entire Trust 2 corpus, Taxpayer, as a Descendant of A, would be entitled to receive: (i) trust income and principal during the trust term, and (ii) a distribution of a per stirpital portion of the remainder (accumulated trust income and principal) when Trust 2 terminates. Taxpayer has not received any income or principal distributions from Trust 2.

Trust 3

Trust 3, an irrevocable trust, was executed by Second Donor on Date 3. The provisions of Trust 3 are identical to those of Trust 2, described above. Taxpayer has not received any income or principal distributions from Trust 3.

Trust 4

Trust 4, an irrevocable trust, was executed by A on Date 4. Under Paragraph First of the Trust 4 instrument, the trust is to be held in three equal shares. Under Paragraph First, subparagraph (a), the income derived from one share is to be accumulated and added to principal. Under Paragraph First, subparagraph (b), the income from the second one-third share is to be paid to A, and, on his death, to E, if she survives him as his spouse. Under Paragraph First, subparagraph (c), the income from the remaining one-third share is to be paid to E so long as she is A's spouse or has survived A as his spouse, or to any of A's descendants in the event of illness, accident, other misfortune, or emergency, or if, in the trustee's discretion, it is necessary to provide for the comfortable maintenance, support, or education of any beneficiary or his or her family. Income not distributed is to be added to principal.

Under Paragraph First, subparagraph (d), after A's death, or on E's later death if she survives A as his spouse, all of the one-third shares of Trust 4 are to be combined into a single trust (less any portion of the one-third share described in Paragraph First, subparagraph (b) for which A has made a contrary testamentary disposition of the

income pursuant to the right A reserved to do so in Paragraph Third, subparagraph (d)) along with accumulated income. Trust 4 is then to be divided into equal shares, one share for each of A's then living children and deceased children leaving surviving issue, the surviving issue to take the deceased child's share by representation, per stirpes. During the continuation of the trust term, the trustee is to pay to the beneficiaries (A's children or their surviving issue by representation) of a respective share so much income of that share as the trustee in the trustee's discretion determines.

Under Paragraph First, subparagraph (e), after A's death, the trustee may distribute principal to an income beneficiary in the event of illness, accident, other misfortune, or any emergency, or if, in the trustee's judgment, it is necessary to provide for the comfortable maintenance, support, or education of the beneficiary or his or her family. Any amount paid is to be charged against the share from which the beneficiary is then receiving or entitled to receive income.

Under Paragraph First, subparagraph (d), Trust 4 is to terminate twenty years after the death of the last survivor of A, E, and those of A's children living on Date 4. Upon termination, the Trust 4 estate will be distributed, per stirpes, to A's descendants then living who have no living ancestor who is a descendant of A.

When A executed Trust 4, A had two children, including D. D's life is one of the lives measuring the duration of Trust 4. Taxpayer, as A's descendant, and while A is living, is entitled to distributions of income from a one-third share, described in Paragraph First, subparagraph (c) above, in the event certain needs arise. After both A and D have died, if Taxpayer is living, he will be entitled, as D's surviving issue, to: (i) distributions of income and principal of the Trust 4 share set aside for D, and (ii) on termination of Trust 4, distribution of all or a portion of the remainder of that share, by representation. Taxpayer has not received any income or principal distributions from Trust 4.

Taxpayer attained the age of majority under State law on Date 5. Taxpayer proposes to disclaim his contingent right to receive a remainder interest in Trusts 1, 2, 3, and 4 upon termination of these trusts, including any interest he would receive as a potential appointee of A's limited power of appointment over Trusts 2 and 3. The disclaimers will be executed by Taxpayer within nine months after attaining his majority. Dates 1, 2, 3, and 4 are all prior to 1977.

Taxpayer requests a ruling that the proposed disclaimers will not constitute a transfer subject to federal gift tax.

Law and Analysis:

Each of the four trusts is governed by the laws of State. Under § 469.010 of State Revised Statutes, any individual to whom property or an interest therein is donatively transferred by any means, including a transfer resulting from another

disclaimer, may disclaim all or any portion of the transfer. Unless the terms of the transfer otherwise provide, the disclaimer shall cause the terms of the transfer to be applied to the disclaimed transfer and to any future interests taking effect thereafter as if the disclaimant had died immediately before the transfer. The presumption of a disclaimant's death does not prevent recognition of the disclaimant's later born children and their issue, assuming they have rights after all proper acceleration has taken place, nor does it prevent recognition of future and other interests of the disclaimant that are not disclaimed. For all purposes, the disclaimed interest is deemed to have passed directly from the transferor to the ultimate taker or takers and is not subject to the claim of any creditor of the disclaimant. A disclaimed portion of a transfer passes to the same ultimate taker or takers and in the same proportions as in the case of a disclaimer of all of the transfer.

Section 469.020 of State Revised Statutes provides that a disclaimer is made by a writing showing an unconditional refusal to accept a transfer, or a portion thereof, signed by the disclaimant, or representative, and delivered on or before nine months after the transfer, or by any later time provided in the particular case or pursuant to other provisions of chapter 469 of State Revised Statutes, and before any acceptance of the disclaimed interest. Delivery of a disclaimer may be accomplished by delivery to the transferor, the transferor's personal representative or other legal representative, or the holder of legal title to the property to which the interest is related.

Section 469.050 of State Revised Statutes provides that each separate interest in property is subject to disclaimer or acceptance and each separate interest, including any specific amount, part, fraction, or asset thereof, or formula amount based on present or future facts independent of the disclaimant's volition, is subject to disclaimer or acceptance.

Section 469.070 of State Revised Statutes provides that a contingent future interest may be disclaimed in whole or in part at any time before, or within nine months after, beneficiaries of the interest have been fully ascertained and their interests vested.

Section 2501(a) of the Internal Revenue Code imposes a tax on the transfer of property by gift. Section 2511(a) provides that the gift tax imposed under § 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 25.2511-1(c)(2) of the Gift Tax Regulations provides that, in the case of transfers creating an interest in the beneficiary disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives the beneficiary a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent, a refusal to accept ownership does not constitute the making of a gift if the refusal: (1) is made within a reasonable time after knowledge of the existence of the transfer; (2) is unequivocal; (3) is effective under local law; and (4) is made before the disclaimant has accepted the property. Compare § 2518 and

§ 25.2518-1 through § 25.2518-3, providing rules for determining whether a disclaimer is a qualified disclaimer effective for estate and gift tax purposes, in the case of the disclaimer of an interest in property that is created in the beneficiary disclaiming a transfer made after December 31, 1976.

As noted above, under § 25.2511-1(c), if the interest to be disclaimed was created before January 1, 1977, the disclaimant must disclaim the interest in the property within a reasonable time after knowledge of the existence of the transfer creating the interest to be disclaimed. In the case of a disclaimer of an interest in trust, in general, the transfer occurs when the trust is established rather than when the interest actually vests in the disclaimant, if the transferor has not reserved any power over the trust. See Jewett v. Commissioner, 455 U.S. 305 (1982). However, the time limitation for making the disclaimer does not begin to run until the disclaimant has attained the age of majority and is no longer under a legal disability to disclaim. See Jewett v. Commissioner, supra, 455 U.S. at 318. See also, § 2518(b)(2)(B) and § 25.2518-2(c)(1)(ii).

In this case, Taxpayer proposes to disclaim his contingent right to receive the remainder interest in Trusts 1, 2, 3, and 4 upon their termination. He will execute each disclaimer within nine months after reaching age 18. Under these circumstances, the proposed disclaimers will be considered to be made within the time prescribed in § 25.2511-1(c).

Under § 25.2511-1(c)(2), the disclaimers must be unequivocal. Rev. Rul. 76-156, 1976-1 C.B. 292, which considers the application of § 25.2511-1(c), concludes that a disclaimer is unequivocal if the disclaimant's act of refusal is unambiguous in its consequences; that is, the disclaimant must unqualifiedly refuse to accept ownership of the property. For example, a disclaimer is unequivocal if the disclaimed property must pass as otherwise provided in the instrument, and not pursuant to the direction of the disclaimant. Similarly, a disclaimer is unequivocal if the disclaimant does not accept the benefits from the property interest disclaimed. In this case, the disclaimed interests will not pass pursuant to any direction on the part of Taxpayer. Further, Taxpayer will not accept the benefits of the disclaimed interests after the disclaimers. Compare § 25.2518-3(a)(1)(i) and § 25.2518-3(d), Examples (10) and (11), regarding treatment of certain interests in the same property as separate interests eligible for qualified disclaimer treatment under § 2518.

Under § 25.2511-1(c)(2), the disclaimers must be effective under local law. In this case, State law specifically provides that an individual may make a valid disclaimer of any separate interest in property while retaining other separate interests in the same property. Further, the disclaimers will be timely under § 469.070 of the State Revised Statutes. Consequently, if Taxpayer satisfies the procedural requirements prescribed under State law, the disclaimers will be valid under local law.

Finally, under § 25.2511-1(c), the disclaimant must not have accepted the property before the disclaimer. Accordingly, we conclude that, based on the representations made, if the disclaimers are executed as proposed, and assuming that Taxpayer has not accepted or received any of the benefits of the disclaimed interests (the terminating distributions), the disclaimers will not constitute transfers subject to the federal gift tax.

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 Taxpayer. Section 6110(k)(3) 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 Taxpayer.

The rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes

cc: