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October 11, 2007

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Linda E. Stiff
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Report Responding to IR-2007-127, Request for Comments
Regarding General Powers of Appointment Under IRC Section 2514

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

I am pleased to enclose the New York State Bar Association Tax Section's Report No. 1134. This report responds to the request of the Office of the Chief Counsel in IR-2007-127 for comments regarding whether the conclusion reached in several private letter rulings (the "PLRs") that certain individuals with discretionary powers to distribute trust income and principal (including to themselves) do not possess general powers of appointment is consistent with prior published Revenue Rulings.

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The Report concludes that the holding in the PLRs that the individuals referred to above do not possess general powers of appointment because they have substantial adverse interests to each other, within the meaning of Section 2514(c)(3)(B) of the Internal Revenue Code (the "Code"), is inconsistent with the Service's prior Revenue Rulings. At the same time, the Report also indicates that one could nevertheless reasonably conclude that the retained dominion and control that causes the underlying transfer to the trust described in the PLRs to be an incomplete gift should also cause the relevant powers to be treated as powers other than general powers of appointment.

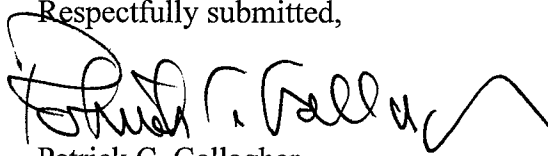
In reaching its conclusions, the Report considers whether the classification of powers as general powers of appointment might impact upon the incomplete gift conclusion in the PLRs, and whether the corresponding analysis set forth in the Report may in turn affect the income tax conclusions of the PLRs. In this regard, the Report concludes that the initial transfer to the trust is an incomplete gift, whether or not the persons described in the PLRs possess general powers of appointment, but questions whether one of the effectively retained powers supporting incomplete gift treatment may be categorized as a presently exercisable power of disposition which, contrary to the conclusion in the PLRs, would cause the trust to be grantor trust under Section 674 of the Code.

The Report also considers a modified structure analyzed in a private letter ruling made publicly available after the issuance of the request for comments. The Report concludes that, although the relevant individuals described in this ruling do not possess general powers of appointment, this structure may raise an additional income tax issue.

Finally, the Report briefly explores potential implications under Section 2518 of the Code (dealing with qualified disclaimers) of a conclusion by the Service, which we believe would be potentially problematic and anomalous, that, although the initial transfer to the trust is an incomplete gift, the relevant powers are nevertheless general powers of appointment. In this regard, the Report briefly discusses a possible modification to the trust that might permit trust property to be returned to the creator of the trust through the use of qualified disclaimers. This modification would not affect the income tax analysis set forth in the PLRs, which analysis, as indicated above, we believe may merit further consideration in light of the incomplete gift analysis set forth in the Report.

We appreciate your consideration of our comments. We would be pleased to discuss these matters with you further or provide any other assistance that you would find helpful.

Respectfully submitted,



Patrick C. Gallagher
Chair

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