

Summary  
Private Letter Ruling 8037116 (not precedent)

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"Paragraph First of the trust instrument provides that the trustees, in their sole discretion, may pay or apply so much of the principal of the trust estate and so much of the net or accumulated income to or for the support and benefit of any of the decedent's mother's descendants, **including the donor**, during the donor's lifetime."

\* \* \*

"Section 2036 provides for the inclusion in the gross estate of all property transferred by a decedent in which he retained for his life or for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death -

(1) the possession or enjoyment of, or the right to income from, the property,"

\* \* \*

"The decedent did not retain outright control over the disposition of trust principal and income, since the trustee could make distributions as he considered appropriate in his sole discretion. However, the decedent did place himself within the class of beneficiaries eligible to receive any amount of principal and income during the decedent's lifetime."

\* \* \*

"In this case, the decedent did not retain the right to possess, enjoy, or receive income from the property, but he did retain the opportunity to enjoy it. However, in the same jurisdiction, the Circuit Court of Appeals has

characterized such a beneficiary status as a hope or passive expectancy rather than a right to enjoyment of the property, with the result that the property was not includible in the gross estate. Herzog v. Comm., 116 F 2d 591, 593 (2<sup>nd</sup> Cir. 1941). **We conclude that the ability of this decedent to receive income and principal under the terms of the trust he created is not sufficient to require inclusion of the property under section 2036(a)(1) of the Code."**

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"Sincerely Yours,

Raymond G. Veltri  
Chief, Estate and Gift Tax Branch"