

Summary

Private Letter Ruling 9332006 (not precedent)

"The Settlers recently created an irrevocable trust (the "Trust") under the laws of Country X and contributed nominal consideration to fund it. Relevant trust provisions include the following. Trust beneficiaries include the Settlers, Beneficiary A (a living parent of the Settlers and a United States citizen), and the Settlers' living and future heirs. Either (1) the Trustee (an independent Country X corporation) with the consent of the Protector (see below), or (2) Beneficiary A, may direct trust income or principal to be appointed to or for the benefit of any beneficiary, provided, however, that only the Protector may make any such appointment for the benefit of a Beneficiary A or of either Settlor."

* * *

"It has been represented that under the laws of Country X, neither a beneficiary nor any creditor of any beneficiary, including the Settlers, may compel the trustee to distribute the Trust's assets to or for their benefit at any time during the trust term; that transfers by the Settlers of interest in the Partnership to the Trust are not in any way liable to be set aside under any applicable fraudulent conveyance or other law, domestic or foreign."

* * *

"Will any of the interests in the Partnership transferred to the Trust by the Settlers be includible in their gross estate under sections 2033, 2036, 2037, or 2038? 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 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."

* * *

"Furthermore, based on the taxpayer representations regarding Country X law, the property transferred to the Trust will not be included in the gross estate of either Settlor under section 2033, since the gift to the Trust will be complete and neither Settlor will have the right to compel a distribution from the trust. Similarly, interests in the Partnership transferred to the Trust by either Settlor will not be included in that Settlor's gross estate under sections 2036, 2037, or 2038, since under the facts resented, the Trustee's

discretion to make distributions to a Settlor is not a retained interest or power for purposes of those sections. See Rev. Rul. 76-103, cited above."