

MEMORANDUM

Date: December 19, 2012

To: Leon Black

From: Elyse G. Kirschner

Re: 2012 Trusts for Your Children

This memorandum explains the principal provisions of the four (4) trust agreements we have prepared for your children and the anticipated tax consequences of certain of their provisions.

I. The 2012 Trusts

A. Trust Fund

Each child of yours will be a creator of a trust (the “settlor”) for the primary benefit of his or her future children and more remote issue. It is anticipated that Alex and Victoria each will receive a distribution of assets from his or her existing 2011 trust, and will transfer such distributed assets to his or her trust. Ben and Josh each will fund his trust with the note issued to him from his 2011 Trust. Each new trust will be governed by the provisions described below.

B. Dispositive Provisions

1. Distributions

The primary trust provides that the trustees must distribute as much of the trust fund to Debra and the settlor’s issue¹ as the independent trustees determine for any reason.

¹ For all purposes of the trust agreement, the settlor’s issue includes the settlor’s children and their descendants.

2. *After Death of the Settlor*

The primary trust will end upon the death of the settlor. When the trust terminates, the remaining assets will be paid to the settlor's issue then living,² in a separate lifetime trust for each of them (described in I.B.4, below).

3. *Remote Takers*

In the event the settlor not survived by any of his or her issue, any undisposed of property will be paid to his or her heirs-at-law.

4. *Separate Trusts for Issue*

Assets directed to be held in a separate trust for a child or more remote issue of the settlor will be held in a trust under article IV of the trust agreement. Each child or more remote issue is referred to as the "Primary Beneficiary." The trustees must pay as much of the trust fund of each trust to the Primary Beneficiary as they determine is necessary for the Primary Beneficiary's health, education, support and maintenance. In addition, the trustees must pay as much of the trust fund of each trust to the Primary Beneficiary as the independent trustees determine. When the Primary Beneficiary reaches age 35, he or she will have the power to appoint the trust fund to or for the benefit of any of the settlor's issue (other than himself or herself) either during his or her life or at death. This power may be suspended, terminated or postponed by the independent trustees for good cause, such as serious illness, creditor issues, a pending divorce or the like.

Each trust will end on the Primary Beneficiary's death. Upon termination, any remaining assets will be paid to the Primary Beneficiary's issue then living, or if the Primary Beneficiary has no issue then living, to his or her siblings then living, or if none, to the settlor's issue then living, in each case in a separate lifetime trust for each of them upon the same terms as the terminated trust.

C. *Trustees*

You will be the initial trustee of each trust. Please let us know if you would like to designate a co-trustee to serve with you.

During the settlor's lifetime, he or she will have the power to designate additional and/or successor trustees. The settlor also will have the power to remove trustees, provided that if the removed trustee was an independent trustee, such removal will not be effective until a new

² Assets payable under the trust agreement to an individual's issue will be paid in equal shares to such individual's children. If a child does not survive such individual, the predeceased child's share of the assets will be paid in equal shares to his or her children then living.

independent trustee is designated. After the settlor's death or disability, the trustees may designate additional and/or successor trustees of any trust other than a trust for which the Primary Beneficiary has the power to remove trustees.

Please let us know if you approve of the provisions giving each settlor the power to remove and replace the trustees of his or her trust. If you think that some or all of your children are too young to have these powers, we can give you and/or Debra these powers for a period of time.

After the settlor's death, beginning at age 35, each Primary Beneficiary may designate additional and/or successor trustees of his or her trust (including himself or herself), and may remove trustees of such trust, provided that if he or she removes an independent trustee, such removal will not be effective until a new independent trustee is designated.³

D. Administration and Modification

The trust agreement gives the trustees broad investment and administrative powers.

In addition, the independent trustees may modify the trust agreement in certain respects while the settlor is competent, but only after giving the settlor 5 days' written notice. The independent trustees are permitted to add any person to the class of beneficiaries of each trust while the settlor is competent. The modification powers have been included to give the trustees the flexibility to deal with future circumstances.

II. Tax Consequences

A. Gift Tax

Any gift the settlor makes to the primary trust will be a taxable gift.

In 2012, each individual has a federal credit against lifetime taxable gifts (i.e., gifts in excess of the annual exclusion amounts described above and in excess of gifts for educational or medical expenses paid directly to those institutions and other than gifts to a spouse or charity) of \$5.12 million. The settlor will fund the trust with an interest in the publishing company, the value of which is no greater than his or her remaining gift tax credit.⁴

³ These powers may be postponed by the independent trustee for good cause.

⁴ We will confirm with Tom Turrin that none of your children have used any of portion of his or her gift tax credit.

Federal gift tax returns should be filed to report the settlor's gifts to his or her primary trust. For contributions made in 2012, gift tax returns will be due on April 15, 2013. As long as the amount of the settlor's gifts to the trust in 2012 do not exceed the amount of his or her remaining federal gift tax credit, no federal gift tax should be due with respect to such gifts.

B. Generation-Skipping Transfer Tax

The generation-skipping transfer ("GST") tax generally is imposed, in addition to any gift or estate tax, on transfers to persons two or more generations below the transferor's own generation, at the highest estate and gift tax rate. It is also imposed on a trust when a beneficiary dies and there is no other beneficiary of the trust who is a member of the deceased beneficiary's generation or a higher generation. Under current law, each individual may currently transfer up to \$5.12 million to such persons without incurring a GST tax (the so-called "GST exemption"). Unless Congress acts to change the law, this amount will be reduced in 2013 to about \$1.43 million.

The settlor's GST exemption will be allocated automatically to his or her primary trust to shield from the GST tax those assets that may pass from the trust directly to his or her grandchildren or more remote issue, unless he or she elects out of the automatic allocation. We recommend that each settlor allow portions of his or her GST exemption to be allocated to his or her transfers to his or her trust on his or her gift tax return.

C. Estate Tax

The trust agreement does not give the settlor an interest in or control over the disposition of trust assets after he has contributed them to the trust. As a result, the trust property should not be included in his or her estate for estate tax purposes.⁵ Accordingly, the full value of the assets remaining in the trust at his or her death (including all appreciation on the original gift) should pass to his or her issue without federal or New York estate tax.

D. Income Tax

During the settlor's lifetime, the primary trust will be a grantor trust. This means that all of the trust's income, deductions, and credits will be taken into account by the settlor

⁵ In the event that the assets a settlor contributes to his or her trust were to decrease in value, or in the event the IRS were to "claw back" his or her 2012 gift if the estate tax exempt amount (currently, \$5.12 million) at the time of his or her death were less than the gift tax lifetime credit amount at the time of the gift, the independent trustees could decide to grant the settlor a limited power of appointment. If granted, the power would result in the trust property being included in the settlor's estate for estate tax purposes at the settlor's death. However, when calculating the settlor's federal estate tax, his or her executors would not count the 2012 gift as an "adjusted taxable gift," which means that the settlor's estate would essentially get back the gift tax credit previously used when the settlor made the 2012 gift, so the settlor would not have "wasted" his or her gift tax credit.

when he or she files his or her income tax returns. If the trustees use his or her social security number as the trust's taxpayer identification number, the trust will not be required to file income tax returns. The independent trustees will have the power to modify the trust so that they may reimburse the settlor for any income taxes the settlor incurs that are attributable to the income of the trust, provided that such power does not result in the settlor's creditors being able to reach the trust assets.

After the settlor's death, each trust will be a separate taxpayer for income tax purposes and will be required to file annual federal income tax returns. Each trust will pay income tax on its income except to the extent distributed to beneficiaries.⁶ Each beneficiary will pay income tax on distributions received from the trust to the extent of his or her share of the distributed income.

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As part of its effort to curb tax shelters, the Internal Revenue Service has issued regulations that impose sanctions on attorneys who provide informal written tax advice without prominently disclosing that the advice cannot be relied upon by the taxpayer for the purpose of avoiding penalties. Because this memorandum contains a discussion of taxes but does not warrant the significant additional time or expense that would be involved in the preparation of a formal opinion that complies with the IRS rules, we include the relevant IRS disclosure, below. If you would like us to prepare a formal tax opinion on which you may rely for penalty relief, please let us know, and we can discuss the cost of preparing one.

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Internal Revenue Service Circular 230 Notice: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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⁶ Under current law, it may be possible after the settlor's death for a trust to avoid New York income tax if it has no trustees who are New York residents, no tangible or real property located in New York and no New York source income.

Cc: Eileen Alexanderson
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