

Internal Revenue Service

Department of the Treasury

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P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply to:

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Date: November 23, 1998

Re:

LEGEND

Settlor =

Trust =

A =

B =

C =

Beneficiary =

State =

This is in response to your August 7, 1998 letter and other correspondence in which you requested a ruling on the application of the generation-skipping transfer tax.

On July 14, 1968, the Settlor created the Trust, an irrevocable trust, for the lifetime benefit of the Beneficiary. No additions have been made to the Trust after September 25, 1985. The Trust is administered in State.

Under the terms of the Trust, while the Beneficiary was under the age of twenty-one years, the trustees were to pay to the Beneficiary so much of the income as they, in their discretion, determined to be required for her reasonable support, comfort and education, adding any excess income to principal. After the Beneficiary attains age twenty-one, the trustees are to pay income and principal to her as the trustees deem in her best interest, being guided by the standard of living that the Settlor has established for her.

On the Beneficiary's death, the remaining trust property will be distributed to the Beneficiary's issue per stirpes. If there are no issue, the trust property will be distributed to the Settlor's then living descendants. If there are no descendants, the trust property will be distributed as if the Settlor died intestate. The property may be held in further trust until any remainder beneficiary attains age twenty-one.

The Settlor designated A and B as co-trustees. Clause Sixth, Paragraph 1(a) of the Trust provides that any trustee may resign at any time by giving written notice. Clause Sixth, Paragraph 1(b) provides that on B's resignation as co-trustee, C is to be substituted in B's place. If A dies, refuses to act, or resigns, the then acting co-trustee is to continue to act as sole trustee. Paragraph 1(b) also provides that the co-trustees are to designate, upon their appointment, a corporation to succeed as trustee when all of the individuals (i.e., A, B, and C) are unable to act. If there is no designation, the current income beneficiary will name the successor trustee.

Clause Sixth, Paragraph 4 of the Trust provides that, if the trustee (or co-trustees) change the situs of the Trust, they may appoint either an individual or corporation as trustee. The former trustee (or co-trustees) that made the appointment may remove that individual or corporation and again become trustee, or appoint another successor trustee.

A and B administered the Trust as co-trustees until B resigned. B's resignation is evidenced by an instrument dated December 9, 1997. C succeeded B as co-trustee. C has died. A is now the sole trustee of the Trust. There is no designated successor corporate trustee.

Under applicable State law, a trustee is precluded from making any discretionary distributions of either principal or income to or for the benefit of such trustee except to provide for that trustee's health, education, maintenance or support (as defined in IRC §§ 2514 and 2041). In addition, the trustee is precluded from making any distributions of either principal or income to satisfy any legal support obligation of such trustee.

The trustee proposes to petition the local court to modify Clause Sixth, Paragraphs 1 and 4 of the trust. The modification would affect the appointment of trustees.

Under the modification, current individual trustees may appoint their successors. They may also appoint an additional trustee that may be a person, bank or trust company. If there is

neither a current trustee or a designated successor trustee, then the current income beneficiary (at the time of appointment) will designate the successor trustee. An appointment of a successor trustee may be revoked by the person who made the appointment at any time before the successor actually assumes the duties of trustee. There are to be no more than three co-trustees at one time, and no more than one bank or trust company may be a trustee at one time.

In addition, the reformation will modify some of the administrative provisions to reflect the new trustee designation provisions.

We have been asked to rule that the proposed modifications will not adversely affect the grandfathered status of the Trust for purposes of the generation-skipping transfer tax.

Applicable law and analysis

Section 2601 of the Internal Revenue Code provides that a tax is imposed on every generation-skipping transfer. Section 2611 defines the term "generation-skipping transfer" to mean a taxable termination, a taxable distribution, or a direct skip.

Section 26.2601-1(b)(1)(i) of the Generation-skipping Transfer Tax Regulations provides that the provisions of Chapter 13 will not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985. This rule does not apply to a portion of any generation-skipping transfer under an irrevocable trust where additions are made to the trust after September 25, 1985.

In the present case, the Trust was irrevocable on September 25, 1985, and there have been no additions made to the Trust after that date. There have been no modifications or amendments to the trust agreement since September 25, 1985.

The proposed modification is administrative in nature and will not result in any change in the quality, value, or timing of any beneficial interest in the trust. Consequently, the modification will not affect the exempt status of the trust with respect to the generation-skipping transfer tax.

Except as we have specifically ruled herein, we express no opinion under the cited provisions or any other provision of the Code.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the power of attorney on file, we are sending a copy of this letter to the taxpayer.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4