

Internal Revenue Service

Department of the Treasury

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CC:DOM:P&SI:7:PLR-112591-98

Date: February 4 1999

Re:

TIN:

Legend: Decedent:
Year 1:
Year 2:
Date 1:
Son:
Son's Wife:
Daughter:
Date:
Court:

Dear

In a letter dated, and subsequent submissions, you requested a ruling concerning the generation-skipping transfer (GST) tax consequences of the proposed division of a "grandfathered" trust. This letter responds to your request.

Decedent created a revocable trust in Year 1. On Decedent's death in Year 2, the trust became irrevocable and was divided into two trusts, a marital trust and a family trust. This ruling request concerns the family trust ("Trust"). Decedent's spouse died testate on Date 1. Decedent's spouse appointed the marital trust to her estate and her estate has been distributed under her will.

Article II(d)(3)(D) of the Trust provides that upon the first date that the Decedent and the Decedent's spouse are both deceased, if Son shall then be living, then commencing on such date and during Son's lifetime, the trustee may distribute or apply any part of the net income of the Trust up to a maximum of fifty percent (50%) of such net income to or for the benefit of Son, at such times and in such manner as the trustee shall in its

sole discretion deem advisable for the health and support in reasonable comfort of Son.

Article II(d)(3)(E) of the Trust provides that upon the first date that the Decedent, the Decedent's spouse, and Son are all deceased, if Son's Wife shall then be living, then commencing on such date and during Son's Wife's lifetime, the trustee may distribute or apply any part of the net income of the Trust up to a maximum of fifty percent (50%) of such net income to or for the benefit of Son's Wife, at such times and in such manner as the Trustee shall in its sole discretion deem advisable for the health and support in reasonable comfort of Son's Wife. In making this determination, the trustee shall take into consideration all other income available to the Son's Wife.

Article II(d)(3)(F) of the Trust provides that upon the first date that the Decedent and the Decedent's spouse are both deceased, then commencing on such date and until the first date that Son, Son's Wife, and Daughter are all deceased, to the extent that less than fifty percent (50%) of the net income of the Trust is distributed or applied for the benefit of Son and Son's Wife, pursuant to the provisions of subparagraph (d)(3)(D) and (d)(3)(E), the trustee may distribute any part of the net income of the Trust up to a maximum of: (i) the excess of fifty percent (50%) of the net income of such trust over (ii) the amount of the net income of such trust actually distributed to or applied for the benefit of Son or Son's Wife, to or for the benefit of Son's children and the lineal descendants of any deceased child of Son, at such times, in such manner, and in such proportions as to each such child of Son and the lineal descendants of any deceased child of Son (without any necessity to maintain equality of distribution), as the trustee shall in its sole discretion deem advisable for the health, education (including college and professional education), and support in reasonable comfort of the children of Son and the lineal descendants of any deceased child of Son.

Article II(d)(3)(G) of the Trust provides that upon the first date that the Decedent and the Decedent's spouse are both deceased, then commencing on such date and until the first date that Son, Son's Wife, and Daughter are all deceased, in addition to the income payments, the trustee may distribute any part of the principal of the Trust up to a maximum of fifty percent (50%) of the said principal to or for the benefit of Son (if he survives the Decedent and the Decedent's spouse and for so long as he shall live), the children of Son and the lineal descendants of any deceased child of Son, at such times, in such manner and in such proportions as to the Son, each child of the Son and the lineal descendants of any deceased child of the Son (without any

necessity to maintain equality of distribution), as the Trustee shall in its sole discretion deem advisable for the health, education (including college and professional education), and support in reasonable comfort of Son, Son's children, and the lineal descendants of any deceased child of Son.

Article II(d)(3)(H) provides that upon the first date that the Decedent and Decedent's spouse are both deceased, if Daughter is still living, then commencing on such date and during Daughter's lifetime, the trustee may distribute or apply any part of the net income of the Trust up to a maximum of fifty percent (50%) of such net income to or for the benefit of Daughter, at such times and in such manner as the Trustee shall in its sole discretion deem advisable for the health and support in reasonable comfort of Daughter.

Article II(d)(3)(I) of the Trust provides that upon the first date that Decedent and Decedent's spouse are both deceased, then commencing on such date and until the first date that Daughter, Son, and Son's Wife are all deceased, to the extent that less than fifty percent (50%) of the net income of the Trust is distributed to or applied for the benefit of Daughter, pursuant to the provisions of Article II(d)(3)(H), the trustee may distribute any part of the net income of such trust up to a maximum of: (i) the excess of fifty percent (50%) of the net income of such trust over (ii) the amount of the net income of such trust actually distributed to or applied for the benefit of Daughter, to or for the benefit of Daughter's children and the lineal descendants of any deceased child of Daughter, at such times, in such manner, and in such proportions as to each such child of Daughter and the lineal descendants of any deceased child of Daughter (without any necessity to maintain equality of distribution), as the trustee shall in its sole discretion deem advisable for the health, education (including college and professional education), and support in reasonable comfort of the Daughter's children and the lineal descendants of any deceased child of Daughter.

Article II(d)(3)(J) of the Trust provides that upon the first date that the Decedent and the Decedent's spouse are both deceased, then commencing on such date and until the first date that Daughter, Son, and Son's Wife are all deceased, in addition to the income payments, the trustee may distribute any part of the principal of the trust up to a maximum of fifty percent (50%) of the said principal to or for the benefit of Daughter (if she survives the Decedent and the Decedent's spouse and for so long as she shall live), the children of Daughter and the lineal descendants of any deceased child of the Decedent's daughter, at such times, in such manner, and in such proportions as to the

Daughter, each child of the Daughter and the lineal descendants of any deceased child of Daughter (without any necessity to maintain equality of distribution), as the trustee shall in its sole discretion deem advisable for the health, education (including college and professional education), and support in reasonable comfort of Daughter, Daughter's children, and the lineal descendants of any deceased child of Daughter.

Article II(d)(3)(L) of the Trust provides that upon the first date that the Decedent, the Decedent's spouse, Son, Son's Wife, and Daughter are all deceased, the Trust will terminate and the principal and accumulated income, if any, of Trust will be distributed in equal shares to the Decedent's then living grandchildren. If any grandchild of the Decedent shall not be then living but shall have one or more lineal descendants then living, then the share which would otherwise have been distributed to such grandchild shall be distributed to his or her then living lineal descendants, per stirpes.

On Date 2, the Court entered a Summary Final Judgment, in which it construed the Trust. In the Summary Final Judgment, the Court determined that Decedent's testamentary intentions would be best effectuated by construing the administrative terms of the Trust as severing the Trust into two separate trusts. The Court ordered that the Trustee shall sever the Trust into two separate trusts, one for the benefit of Son and his family and the other for the benefit of Daughter and her family. The Court further ordered that the trustee fund each such trust with a 50% interest in each and every significant asset, interest, and right held under the Trust. In addition, the Court held that the trustee shall administer each of the severed trusts as separate and independent trusts pursuant to the original terms of Trust, which will remain in effect until the last to die of Son, Son's Wife, and Daughter, at which time the separate trusts will terminate and all of the remaining assets will be "distributed to Decedent's grandchildren, per stirpes, as provided in paragraph (d)(3)(L) of Article II of Trust."

Taxpayers represent that on the last to die of Son, Son's Wife, and Daughter, the separate trusts will terminate and be recombined into one trust. The remaining trust assets then will be distributed to Decedent's grandchildren, per capita, as provided in paragraph (d)(3)(L) of Article II of Trust. If a grandchild is then deceased, that grandchild's share will then be distributed, per stirpes, to the then living descendants of that grandchild, as provided in paragraph (d)(3)(L) of Trust.

You have requested the ruling that the division of Trust into two separate trusts for Son and Son's family and for

Daughter and Daughter's family will not cause Trust to lose its exempt status for Generation-Skipping Transfer Tax (GST) purposes.

Section 2601 of the Code imposes a tax on every generation-skipping transfer.

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the tax does not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust.

Section 2611(a) defines the term "generation-skipping transfer" as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate and gift tax.

Section 2612(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person" to mean --

(1) a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or

(2) a trust--

(A) if all interests in the trust are held by skip persons, or

(B) if--

(i) there is no person holding an interest in the trust, and

(ii) at no time after the transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

An amendment to an exempt trust that modifies or otherwise changes the quality, value, or timing of any of the powers, or beneficial interests, rights, or expectancies originally provided under the terms of the Trust will cause the trust to lose its exemption from the GST tax.

The Trust for the benefit of Son and Son's family and Daughter and Daughter's family is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Decedent's generation. Because, however, the Trust was irrevocable on September 25, 1985, and there have been no additions to the trust since that date, it is exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i).

Under the court-ordered division of the Trust, the interests of Son and Daughter's children and their descendants, will remain the same and the timing of the termination of the resulting trusts will remain the same. Consequently, the value of the income or corpus interest of each beneficiary will not change materially as a result of the division of the trust corpus into two separately administered trusts. Accordingly, the proposed division of the trust into two trusts will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the original terms of the Trust.

Based on the information submitted and the representations made, we conclude that the division of the Trust into two equal trusts will not cause the two separate trusts, or any distributions from any of the two separate trusts, to be subject to the GST tax.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

This ruling 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 with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Christine E. Ellison

Christine E. Ellison, Chief
Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

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