

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:7-PLR-114037-99
Date:
July 21, 2000

LEGEND:

a =

Grantor =

Trust =

Son 1 =

b =

Grandson =

Granddaughter =

Company =

Foundation =

c =

d =

Son 2 =

Daughter =

e =

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City =

Court =

f =

g =

Dear Sir or Madam:

In a letter, dated August 11, 1999, you requested rulings concerning the generation-skipping transfer (GST) tax consequences of the proposed partition and modification and clarification of the administrative provisions of a grandfathered trust.

The information submitted and the representations made are summarized as follows: On a, Grantor created the Trust for the benefit of Son 1 and his lineal descendants. Son 1 died in b, survived by Grandson and Granddaughter. Grandson and Granddaughter are the current income beneficiaries of the Trust.

The relevant provisions of the Trust are summarized as follows:

Distribution of Income:

The trustee is to pay the income from the Trust semiannually or more often, in its discretion, to Son 1 for and during the term of his natural life. After the death of Son 1, the income is to be paid to the lineal descendants of Son 1 who are living at the time of the respective distributions. In the event there are no lineal descendants of Son 1 then living, the income is to be paid to the lineal descendants of Grantor who are living at the time of the respective distributions, all *per stirpes* and not *per capita*. In the event, however, that there is no income beneficiary, as above provided for, living at the time of any distribution of income, the trustee at that time is to pay the income to Company in trust for the Foundation.

Accumulation of Income:

The trustee, however, in so far as such retention is not forbidden by law, is to accumulate and retain in the Trust as a part of the corpus thereof any income that otherwise would be payable to any person under the age of c; provided, that the trustee in its discretion may pay that part of the income as may be necessary for his proper support and maintenance to any person to whom income otherwise would be payable were it not for the accumulation, except that no payment of income is to be made toward any person to whom Grantor owes any legal duty of support.

Termination:

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The Trust is to terminate on the first to occur of the following two events: (1) The death of the survivor among Grantor and all of Grantor's lineal descendants, and (2) d years after the death of the survivor among Grantor and Grantor's children, Son 1, Son 2, and Daughter.

Distribution of Principal:

On the final termination of the Trust the then principal and corpus thereof is to be distributed to the then living lineal descendants of Son 1, and in the event there are no lineal descendants of Son 1 then living, to the then living lineal descendants of Grantor, all *per stirpes* and not *per capita*. In the event that there are no lineal descendants of Grantor then living, the Trust fund is to be paid as Son 1 appoints by will, and in default of appointment by Son 1 as Son 2 appoints by will, and in default of appointment by Son 2 as Daughter appoints by will, and in default of appointment by all of Grantor's children, to Company in trust for the Foundation; provided that no appointment is to be made to or for the benefit of Grantor.

Successor to Trustee:

In the event of the merger, consolidation, or sale of substantially all of its assets by Company, to or with another bank or trust company authorized to carry on a trust business, the merged, consolidated, or purchasing company is to become the trustee.

A majority of the adults then entitled to receive income from the Trust (or if only one, then that one) may at any time or times by instrument in writing delivered to the then trustee, name a successor trustee, and may change any designation of a successor trustee previously made (prior to the time when the successor trustee has become the trustee hereunder); provided that the successor trustee is to be a bank or trust company authorized to carry on a trust business in one or more states of the United States having a capital, surplus, and undivided profits of not less than e. If any adult renounces his or her right to name a successor trustee, a majority of the remaining adults (or if only one, then that one) then entitled to receive income are to have the right provided in this paragraph to name a successor trustee. In the event that the then trustee resigns, is removed, or fails or ceases to serve for any reason, the successor trustee named in the manner provided in this paragraph is to succeed to all the powers and duties of the original trustee. The right to name or designate a successor to the trustee is not to be construed as including the right to remove the trustee or successor trustee.

In the event that the then trustee or successor trustee resigns, is removed, or fails or ceases to serve for any reason and a successor trustee has not been named as above provided, the successor trustee is to be a bank or trust company, with its principal office and place of business in City, and authorized to carry on a trust business, which has the largest total of capital, surplus, and undivided profits of any

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such bank or trust company in City that is willing and able to serve.

In order to facilitate accounting, record keeping, and the segregation of assets, Grandson and Granddaughter desire to divide the Trust pro rata into two separate trusts and to name separate successor trustees. Because the Trust does not authorize the income beneficiaries to request a division of the Trust, the trustee petitioned the Court to divide the Trust between the income beneficiaries, Grandson and Granddaughter. In addition, the trustee petitioned the Court to give each income beneficiary the power to name a separate successor trustee for his or her separate trust.

On e, the Court issued an order (Court Order) authorizing and directing the trustee to divide the Trust pro rata into two separate sub-trusts, one for the benefit of Grandson and his descendants and one for the benefit of Granddaughter and her descendants, subject to the income beneficiaries obtaining a favorable ruling from the Internal Revenue Service that the Trust will maintain its GST tax exemption. The Courts Order allows the income beneficiary of each sub-trust to appoint a separate successor trustee for his or her respective sub-trust.

Under the Court Order, each successor trustee is authorized and directed to administer a sub-trust by making current income distributions only to the income beneficiary or his or her respective living lineal descendants, *per stirpes*. The Court Order further authorizes and directs each successor trustee to distribute the remaining assets of a sub-trust to the income beneficiary or his or her respective living lineal descendants, *per stirpes*, at the termination of the Trust, or if a then deceased income beneficiary has no living lineal descendants, to the living lineal descendants of Son 1, *per stirpes*. In the event that no lineal descendant of Son 1 is living at the termination of the Trust, each successor trustee is authorized and directed to distribute the remaining assets of a sub-trust to the living lineal descendants of Grantor, *per stirpes*.

It is represented that following the Court Order, it became apparent that the terms for distribution prior to the Trust's termination also needed clarification. All interested parties entered into a Consent and Stipulation as to Terms Governing the Distribution of Trust Assets (Consent and Stipulation). The Court approved the Consent and Stipulation on g.

Paragraph 1 of the Consent and Stipulation provides that each of the sub-trusts is to terminate at the same time on the first to occur of the following events: (1) d years after the death of the survivor between Son 2 and Daughter, or (2) on the death of the survivor among all of the lineal descendants of Grantor.

Paragraph 2 of the Consent and Stipulation provides that on the final termination the balance of the assets in each sub-trust is to be distributed to that sub-trust's income beneficiary. In the event that the income beneficiary is not then-living, the balance of the assets is to be distributed to the deceased income beneficiary's then-living

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descendants *per stirpes*, or if none, the assets are to be distributed *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Grantor and who has one or more then-living descendants. In the event that a sub-trust has more than one income beneficiary, the balance of the assets in the sub-trust is to be distributed *per stirpes* to the then-living lineal descendants of the beneficiary for whose benefit the sub-trust was created.

Paragraph 3 of the Consent and Stipulation provides that on the final termination, in the event that Son 1 has no living lineal descendants, the balance of the trust assets is to be distributed *per stirpes* to the then-living descendants of Grantor.

Paragraph 4 of the Consent and Stipulation provides that in the event no lineal descendants of Decedent are living on the final termination, all Trust assets are to be distributed pursuant to the "Distribution of Principal" section of the Trust.

Paragraph 6 of the Consent and Stipulation provides that the trustee is to pay the income from a sub-trust semiannually (or more often in its discretion) to the descendant of Grantor for whom the sub-trust was created.

Paragraph 7 of the Consent and Stipulation provides that after the death of the descendant, the trustee is to pay the income from the sub-trust semiannually (or more often in its discretion) to the lineal descendants of the deceased descendant who are living at the time of the respective distributions, *per stirpes* subject to the "Accumulation of Income" section of the Trust.

Notwithstanding the foregoing, if

- a. one or more of the descendants of a deceased descendant request the trustee to divide the sub-trust into further sub-trusts for the descendants,
- b. the trustee in its discretion considers it advisable to make such a division, and
- c. the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its "grandfathered" exemption for the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the sub-trust *per stirpes* among the then-living descendants of the deceased descendant. Each share created for a then-living descendant is to be held and administered as sub-trust for the benefit of the then-living descendant.

Paragraph 8 of the Consent and Stipulation provides that in the event that, prior to the final termination, any sub-trust ceases to have a current income beneficiary (e.g., a sub-trust's sole income beneficiary dies without then-living lineal descendants) the

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balance of the sub-trust's assets is to be divided *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Grantor and who has one or more then-living descendants, or if none, *per stirpes* among the then-living lineal descendants of Grantor. Each share created for a then-living descendant is to be transferred to the sub-trust benefitting the descendant, or if none, a sub-trust is to be created for the descendant and administered as a sub-trust for the benefit of the descendant.

Paragraph 9 of the Consent and Stipulation provides that each sub-trust need not have the same trustee.

It is represented that the Trust was irrevocable on September 25, 1985, and there have been no additions (actual or constructive) to it since that date.

You have requested the following rulings:

1. The proposed partition of the Trust will not cause the resulting sub-trusts for the benefit of Grandson and Granddaughter to be subject to the GST tax.
2. The modification and clarification of the administrative provisions of the Trust, as provided in the Court Order and Consent and Stipulation will not cause the sub-trusts to be subject to the GST tax.

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

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 or gift tax.

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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 such 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 such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

The Trust is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Grantor's generation. The Trust, however, has been exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i) because it was irrevocable on September 25, 1985, and there have been no additions to it since that date. You have requested a ruling that neither the proposed division of the Trust into a separate sub-trusts nor the modification and clarification of the administrative provisions of the Trust will cause the sub-trusts to be subject to the GST tax.

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. A trust's exemption from the GST tax is not affected, however, by amendments relating to the administration of a trust.

Based on the information submitted and the representations made, the interests of the income beneficiaries under the division of the Trust, will remain the same and the timing of the termination of the sub-trusts will remain the same. Consequently, the value of the income or corpus interest of each income beneficiary will not change materially as a result of the division of the Trust corpus into separately administered sub-trusts. Therefore, the proposed division of the Trust into separate sub-trusts will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the Trust. Accordingly, we conclude that the proposed division of the Trust into separate sub-trusts will not cause distributions from the sub-trusts to be subject to GST tax imposed by chapter 13, provided that no additions are made to the sub-trusts after September 25, 1985.

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In addition, we conclude that the modification and clarification of the sub-trusts relates to the administration of those trusts and will not modify or otherwise change the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of the Trust. Accordingly, neither distributions from the sub-trusts to skip persons nor terminations of interests of non-skip persons in the sub-trusts will be subject to the GST tax.

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

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code 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,
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Assistant Chief Counsel
(Passthroughs and Special Industries)