

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-134585-01

Date:

APRIL 18, 2002

Re:

Legend:

- Decedent =
- Daughter 1 =
- Daughter 2 =
- Son =
- Grandchild 1 =
- Grandchild 2 =
- Grandchild 3 =
- Trust =

- Trust 1 =
- Trust 2 =
- Trust 3 =
- Trust 4 =
- Trust 5 =
- Court =
- State law =
- Date 1 =
- X Company =

Dear :

This is in response to your letter of December 4, 2001, and prior correspondence, in which you request a ruling on the application of the generation-skipping transfer (GST) tax provisions of chapter 13 of the Internal Revenue Code to the proposed modification to Trust.

Decedent died testate on Date 1. Decedent's will established an irrevocable testamentary trust for the benefit of Decedent's descendants. Paragraph Sixth of Decedent's will provides that all of Decedent's shares of stock in X Company are to be held by X Company in Trust for the purposes set forth in paragraph Eighth.

Paragraph Eighth provides that all the income from the trust estate available for distribution will be distributed quarterly, or more often, for the use and benefit of Decedent's children, Daughter 1, Son and Daughter 2. The income is to be distributed

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equally among the beneficiaries. Upon the death of a child, their share of the income is to be distributed to then living issue of such deceased child in equal shares. If there are no living issue of such deceased child, then such share will augment the share or shares of Decedent's surviving children. Upon the death of the last survivor of Decedent's children, the trust will terminate and the trustee is to distribute the entire principal and undistributed income of Trust to the then living issue of Decedent's deceased children per capita. However, in the event any of Decedent's said issue be then deceased leaving issue surviving, then the share to which the said issue of Decedent's said deceased children would have been entitled will go to the then living issue of such grandchild per stirpes.

If at any time during the life of Trust any then income participating beneficiary is in need of additional funds for reasonable maintenance, comfort and support, or for expenses of accident, illness or other misfortune, the trustee may at the trustee's discretion, pay to or use for or apply or expend for the beneficiary an additional amount up to and including all of the principal of the respective share being held for that beneficiary.

Currently, Daughter 1 and Son are income beneficiaries. Daughter 2 is deceased and survived by three children, Grandchild 1, Grandchild 2, and Grandchild 3, who are also income beneficiaries. Trustee proposes to partition Trust into five subtrusts, Trust 1 for the benefit of Daughter 1, Trust 2 for the benefit of Son, Trust 3 for the benefit of Grandchild 1, Trust 4 for the benefit of Grandchild 2, and Trust 5 for the benefit of Grandchild 3. Trust 1 and Trust 2 will each be funded with one-third of the trust assets. Trust 3, Trust 4, and Trust 5 will each be funded with one-ninth of the trust assets. The subtrusts will be administered pursuant to the terms of Trust and only modified to take into account the creation of the subtrusts as separate trusts.

State law provides that, for good cause showing, the court may divide a trust into two or more separate trusts if the court determines that dividing the trust will not defeat or substantially impair the accomplishments of the trust purposes or the interest of the beneficiaries.

In addition, the dispositive provisions of Trust will be modified pursuant to a court order from Court to provide for a "per stirpes" rather than a "per capita" distribution to Decedent's Grandchildren. Upon the last to die of Daughter 1 and Son, each of the subtrusts (Trusts 1, 2, 3, 4, and 5) will terminate and be distributed free of trust to the then living descendants's of the trust beneficiary, by right of representation. If there are no living issue of a beneficiary, the subtrusts will be distributed in equal shares among the then living issue of Decedent, by right of representation.

You represent that Trust was created before September 25, 1985, and that there have been no additions to Trust after that date.

You have requested the following rulings:

1. That the subtrusts will be treated as trusts which were irrevocable on

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September 25, 1985, for purposes of § 1433(b)(2) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(v) of the Generation-Skipping Transfer Tax Regulations.

2. That the proposed partition and modification of Trust will not constitute an actual or constructive addition to the subtrusts in accordance with § 26.2601-1(b)(1)(v).

3. That neither the creation of the subtrusts nor distributions from the subtrusts to the beneficiaries including but not limited to distributions upon termination, will be subject to the GST tax.

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

Section 1433(b)(2)(A) of the 1986 Act and § 26.2601-1(b)(1)(i) provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(1)(ii)(B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust, which is excluded from the application of chapter 13 by § 1433(b)(2)(A) of the 1986 Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraph (b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, but only if –

(1) The modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than

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the person or persons who held the beneficial interest prior to the modification, and

(2) The modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

In this case, Trust was created and irrevocable before September 25, 1985. Also, it is represented that no additions have been made to Trust since September 25, 1985. Consequently, Trust is currently exempt from GST tax.

The proposed partition of Trust into five subtrusts will not shift any beneficial interest in Trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the proposed partition of Trust will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trust. Accordingly, based on the facts submitted and the representations made, if Court issues an order approving the modification to Trust, the five trusts resulting from the partition of Trust will be treated as Trust for GST tax purposes and the modification will not result in an actual or constructive addition to Trust 1, 2, 3, 4, or 5. In addition, the creation of subtrusts and distributions from the subtrusts to the beneficiaries including but not limited to distributions upon termination, will not be subject to the provisions of chapter 13.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. We are specifically not ruling on the gift tax.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

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.

Sincerely yours,
Lorraine E. Gardner
Assistant to the Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for 6110 purposes