

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-145441-02
Date:
February 10, 2003

Legend

- Trust =

- Grantor =
- Date 1 =
- Beneficiary =
- Court =
- Date 2 =
- Trustee 1 =
- Trustee 2 =
- Child 2 =
- Child 3 =
- Foundation =
- State =

Dear :

This letter responds to your letter, dated August 5, 2002, submitted on behalf of Trust, requesting a ruling under § 2601 of the Internal Revenue Code.

Grantor created Trust, an irrevocable trust, on Date 1 for the benefit of Beneficiary. Trust was modified by Court on Date 2. Date 2 is before September 25, 1985. Trustee 1 and Trustee 2 (collectively, the "trustees") are currently the trustees of Trust.

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The first subparagraph of Paragraph Second(a) of Trust provides in relevant part that the trustees are authorized and empowered to pay to or for the benefit of Beneficiary or any of her descendants, in the sole and absolute discretion of the trustees, in the event of illness, accident or other misfortune, or in the event of any emergency, or if in the judgment of the trustees it is necessary or advisable for the comfortable maintenance, support or education of any such person such sum or sums from time to time out of the income derived from the trust estate after Date 2, whether or not accumulated as the trustees in their sole judgment deem necessary. In determining the existence of any such circumstances, Trustee 1 may rely upon the determination and certification of Trustee 2 acting in his fiduciary capacity as to the existence of such need or condition; provided further, however, that if Trustee 2 should ever be a beneficiary hereunder, the determination as to the existence of such need or condition will be made by Trustee 1.

The second subparagraph of Paragraph Second(a) provides that twenty years after the death of the survivor of Grantor's children (Beneficiary, Child 2 and Child 3) Trust will terminate and the trustees shall transfer the trust assets to the descendants of Beneficiary, per stirpes, who do not have a living ancestor who is a descendant of Beneficiary.

The third subparagraph of Paragraph Second(a) provides that in the event there are no descendants of Beneficiary living at the time of Trust's termination, the principal of the trust estate and undistributed income shall be distributed free and clear to the descendants of Grantor, per stirpes, or in the event there are no descendants living at that time to Foundation.

The trustees of Trust propose to modify the first subparagraph of Paragraph Second(a) of Trust in accordance with State law. The new subparagraph would provide in relevant part that the income shall be accumulated, invested and reinvested by the trustees, provided, however, without intending to vest any enforceable right in any beneficiary, the trustees are further authorized and empowered, in the sole and absolute discretion of the trustees, in the event of illness, accident or other misfortune, or in the event of any emergency, or if in the judgment of the trustees it is necessary or advisable for the comfortable maintenance, support or education of any person hereinafter described, to: (1) Pay to or for the benefit of Beneficiary, or any of Beneficiary's descendants, such sum or sums from time to time out of the income derived from the trust estate after Date 2, whether or not accumulated as the trustees in their sole judgment deem necessary. (2) Pay to or for the benefit of any of

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Beneficiary's descendants who would be entitled to receive distributions upon the termination of the trust as hereinafter provided if the trust terminated at the time of any such payment, such sum or sums from time to time out of the principal of the trust estate, as defined below, as the trustees in their sole judgment deem necessary. In determining the existence of any such circumstances, Trustee 1 may rely upon the determination and certification of Trustee 2 acting in his fiduciary capacity as to the existence of such need or condition; provided further, however, that if Trustee 2 should ever be a beneficiary hereunder, the determination as to the existence of such need or condition will be made by Trustee 1.

The trustees of Trust have requested a ruling that the proposed modification to Trust will not cause Trust to lose its status as exempt from the generation-skipping transfer tax.

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

Section 2611(a) defines the term "generation-skipping transfer" to include a taxable distribution, taxable termination, and a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) 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, 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 except as provided in § 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, Trust 1 is considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(4) 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 under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in § 26.2601-1(b)(4) 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.

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Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(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, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

In this case, Trust currently provides for discretionary distributions of income to Beneficiary and Beneficiary's descendants but does not provide for any distributions, mandatory or discretionary, of principal. The proposed modification will allow the trustees to make discretionary distributions of principal to Beneficiary's descendants who would receive principal if the trust terminated on the date of the distribution. The proposed modification, therefore, will not shift a beneficial interest to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Based on the facts submitted and representations made, we conclude that the proposed modification will not affect Trust's status as exempt from the generation-skipping transfer tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to Trustee.

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This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Melissa C. Liquerman
Chief, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of Letter for § 6110 Purposes