

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

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July 28, 1999

Re:

### LEGEND

Settlor	=
Trust	=
Trust 1	=
Trust 2	=
Trust 3	=
Trust 4	=
Daughter	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Grandchild 4	=
A	=
B	=
C	=
State	=

This is in response to your letter of June 14, 1999, and prior correspondence in which you request a ruling on the application of the generation-skipping transfer (GST) tax to two amendments to be made to the Trust agreement executed by the settlor with respect to Trust 3.

The Settlor created the Trust in 1963. Under the Trust agreement, Trust 1, Trust 2, Trust 3, and Trust 4 are administered as four separate trusts with each such trust owning an undivided one-fourth interest in the Trust property. Daughter, the Settlor's adult child, is a beneficiary of each of the four trusts. In addition, Grandchild 1 and his children and other descendants are the beneficiaries of Trust 1; Grandchild 2 and her children and other descendants are the beneficiaries of Trust 2; Grandchild 3 and his children and other descendants are the beneficiaries of Trust 3; and Grandchild 4 and his children and other descendants are the beneficiaries of Trust 4. There have been no additions, constructive or otherwise, to any of the trusts since September 25, 1985.

The Trust agreement designates Grandchild 1 and A as co-trustees. B was designated to succeed A as co-trustee. If B resigned, he was to designate a successor co-trustee who "as to Trustor [the Settlor] is not a related or subordinate party within the meaning of such terms as used in the Internal Revenue Code." Grandchild 1 continues to serve as co-trustee. A resigned as co-trustee, and he was succeeded by B. B resigned and designated C as co-trustee.

Article I of the Trust agreement states that Daughter is referred to as the "Primary Beneficiary;" each of Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 is referred to as a "Secondary Beneficiary," and the respective children or other descendants of Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 are referred to as the "Ultimate Beneficiaries" of that Grandchild's trust.

The distribution and termination provisions are identical for each of the four trusts. Under Article III and Article VIII, the trustees are granted discretionary powers to distribute income and/or principal among the trust beneficiaries, depending on whether the beneficiary is a Primary, Secondary, or Ultimate beneficiary, and other circumstances. Under Article V, these distributions are to be made "only after approval" by A, the co-trustee, or his successor. Under Article VIII(6), the trustees may terminate a trust at any time if they consider it "necessary and advisable, and for the best interests of any trust and the beneficiaries thereof . . . and in such event, to thereupon make distribution of principal and accumulated income . . . to trust beneficiaries in conformity with the provisions of [the] agreement."

Article II, Duration of the Trusts, presently provides as follows:

Each of the trusts created by the provisions hereof will continue and remain in existence for the benefit of the beneficiaries named or referred to above for a period of time not to exceed twenty-one (21) years after the death of the last survivor of the Ultimate Beneficiaries referred to above who is living on the date of the execution of this agreement, subject to the power of my Trustees to terminate any of these trusts at any time prior to the date on which such trust would otherwise be terminated under these provisions.

However, the Trust does not specify who will be the distributees in the event that the Trust terminates as provided in Article II, on the expiration of 21 years after the death of the last survivor of the Ultimate Beneficiaries living on the date of execution of the trust agreement.

You propose to petition the appropriate local court to construe and amend the trust instrument to provide for the disposition of the trust assets on termination of the Trust under Article II. You will also request that the court approve an amendment authorizing the trustee to employ others to perform administrative duties.

Specifically, the petition will propose that Article II be construed and amended to include a further provision stating that, upon the termination of a trust on the expiration of 21 years after the death of the last survivor of the Ultimate Beneficiaries living on the date of execution of the agreement, the income and principal remaining in that trust shall be distributed to the Primary Beneficiary. If the Primary Beneficiary is not then living, the income and principal remaining shall be distributed to the Secondary Beneficiary, if living, of that trust. If the Secondary Beneficiary is not then living, the income and principal remaining shall be distributed to the issue of that Secondary Beneficiary per stirpes. If the Secondary Beneficiary of that trust and his or her issue are not then living, the income and principal remaining in that trust shall be divided equally among the other trusts and distributed accordingly.

Further, Article VIII, Powers of Trustees, section (13), will be amended to include the following sentence:

The Trustees shall have the power to employ and discharge accountants, brokers, custodians, investment counsel, attorneys, and other agents or servants, and to delegate to them such administrative duties of the Trustees for such period as the Trustees shall select; and to pay any such person reasonable compensation out of the trust property.

You have asked us to rule that these amendments to the Trust agreement will not affect the exempt status of Trust 3, for generation-skipping transfer tax purposes, and that neither distributions from the trusts nor the termination of the trusts will be subject to the generation-skipping transfer tax imposed by section 2601 of the Internal Revenue Code.

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST) made after October 26, 1986.

Under § 1433(b)(2)(A) of the Tax Reform Act (Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax provisions do not apply to any generation-skipping transfer under a trust (as defined in section 2652(b)) that was irrevocable on September 25, 1985. However, this exemption does not apply to additions (actual or constructive) that are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust that is otherwise exempt from the application of chapter 13 (the GST tax) by § 1433(b)(2)(A) of the 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.

A modification of a trust that is otherwise exempt for GST tax purposes under the 1986 Act will generally result in a loss of its “grandfathered” exempt status if the

modification changes the quality, value, or timing of any powers, beneficial interests, rights or expectancies originally provided for under the terms of the trust.

You have represented that Trust 3 was irrevocable on September 25, 1985, and no additions were made to the trusts after that date.

We conclude that the construction and amendment of Article II as proposed is consistent with applicable State law, as would be interpreted by the highest court of State and, therefore, will not alter the quality, value or timing of any powers, or beneficial interests, rights or expectancies originally provided for under the terms of the Trust agreement. Similarly, the proposed amendment to Article VIII will not alter the quality, value or timing of any beneficial interests, rights or expectancies originally provided for under the terms of the Trust agreement. Therefore, the construction and amendments, as proposed, will not subject Trust 3 to the generation-skipping transfer tax.

Accordingly, the proposed action with respect to the Trust agreement will not affect the GST tax status of Trust 3 and, thus, will not result in a transfer of property that will subject any of the four trusts to the generation-skipping transfer tax imposed under section 2601.

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

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.

Sincerely yours,

Assistant Chief Counsel  
(Passthroughs and Special Industries)

By \_\_\_\_\_  
George Masnik  
Chief, Branch 4

Enclosure  
copy for 6110 purposes