

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-117695-99

Date:

July 21, 2000

LEGEND:

Testamentary Trust =

Decedent =

a =

b =

Son 1 =

Son 2 =

c =

Sister =

d =

Spouse =

e =

f =

g =

h =

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Company =

i =

j =

Grandson 1 =

Granddaughter =

Great-Grandson =

Great-Granddaughter =

Grandson 2 =

k =

l =

Trust A =

Trust B =

Trust C =

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Trust D =

Court =

m =n =

Dear Sir or Madam:

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

The information submitted and the representations made are summarized as follows: The Testamentary Trust was created under Item IV of Decedent's will, which was executed on a. Decedent died testate in b, survived by Son 1 and Son 2.

Item IV of Decedent's will provides as follows:

Distribution of Income:

The sum of c a month is to be paid to Sister. The income of the Testamentary Trust not paid to Sister during her lifetime and after her death, all of the income, is to be paid as follows:

1. d *per stirpes* to the lineal descendants of Son 1 living at the time of the respective distribution, of if there is no lineal descendant of Son 1 then living, the d is to be paid to Son 1, or if he is then deceased, it is to be paid *per stirpes* to the lineal descendants of Son 2 living at the time of the respective distribution, or if there is no lineal descendant of Son 2 then living, it is to be paid to Son 2.

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2. d *per stirpes* to the lineal descendants of Son 2 living at the time of the respective distribution, or if there is no lineal descendant of Son 2 then living, the d is to be paid to Son 2, or he if is then deceased, it is to be paid *per stirpes* to the lineal descendants of Son 1 living at the time of the respective distribution, or if there is no lineal descendant of Son 1 then living, it is to be paid to Son 1.

If at the time of any distribution, there is no lineal descendant of Decedent then living, the income is to be paid to Spouse.

Item IV of Decedent's will directs the trustee, in so far as retention is not forbidden by law, to retain in the Testamentary Trust any income that would otherwise be payable to any person under the age of e years, except the part, if any, that the trustee may determine is necessary for his proper support or maintenance. Any sums so retained are to be paid to the person who would have been entitled to them if distributed as income, when and if he attains the age of e years or on the termination of the Testamentary Trust if it terminates prior to the time when he reaches that age. If he does not live until the time provided for the payment of the income retained, that sum is to be added to and treated as part of the principal of the Testamentary Trust.

The income for the first f months of each calendar year not required to be paid monthly is to be distributed on g of that year and the income for the second f months of each calendar year not required to be paid monthly is to be distributed on h of the following year, provided that more frequent periods of distribution may be determined by the trustee with the approval of a court of competent jurisdiction.

Distribution of Principal:

On the final termination of the Testamentary Trust, the principal is to be paid to Decedent's then living lineal descendants *per stirpes*. If at the time of the termination of the Testamentary Trust there is no lineal descendant of Decedent then living, the principal is to be distributed as provided in Item V of Decedent's will.

Termination of the Trust:

The Testamentary Trust is to terminate on the death of the survivor of Spouse and all lineal descendants of Decedent living at the time of Decedent's death.

Successor 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 thereupon to become the trustee of the Testamentary Trust.

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A majority of the adults then entitled to receive income from the Testamentary 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 a trustee); 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 and having capital, surplus, and undivided profits of not less than i. If any adult has renounced his right to name a successor trustee, a majority of the remaining adults (or if only one, then that one) then entitled to receive income from the Testamentary Trust is 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.

Son 1 died in j leaving no surviving issue. Son 2 died in j survived by two children, Grandson 1 and Granddaughter, and two great-grandchildren, Great-Grandson and Great-Granddaughter, the children of his deceased grandson, Grandson 2.

Pursuant to the terms of the Testamentary Trust, the share of Son 1 is being paid *per stirpes* to the living lineal descendants of Son 2. The current income beneficiaries of the Testamentary Trust are Grandson 1, Granddaughter, Great-Grandson, and Great-Granddaughter.

Over the years, the relationships among the income beneficiaries have deteriorated. Until k, the Testamentary Trust was administered as one trust. The income beneficiaries requested the resignation of the trustee, but could not come to majority agreement regarding the appointment of a successor trustee as provided in the Trust.

At the request of income beneficiaries, the trustee divided the Testamentary Trust assets pro rata into four separate trusts in l. Trust A was established for Granddaughter with one-third of the Testamentary Trust's assets. Trust B was established for Grandson 1 with one-third of the Testamentary Trust's assets. The remaining one-third of the Testamentary Trust's assets was divided pro rata between two separate trusts, Trust C for the benefit of Great-Grandson and Trust D for the benefit of Great-Granddaughter.

The trustee petitioned the Court for its approval of the division of the Testamentary Trust. In addition, the trustee petitioned the Court to give each income beneficiary the power to name a separate trustee for his or her separate trust. Finally, because Trust A, Trust B, Trust C, and Trust D (collectively, the Trusts) were still being administered under the terms of the Testamentary Trust, the petition also requested the

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clarification of the terms by which the successor trustees would distribute the assets of the Trusts at their termination.

On m, the Court issued an order approving the division of the Testamentary Trust pro rata into separate Trusts for the benefit of the individual income beneficiaries. In addition, the Court order authorized and directed the trustee to allow the income beneficiary of each Trust to appoint a separate successor trustee for his or her respective Trust. The Court also directed each successor trustee, until the termination of the Testamentary Trust, to administer a Trust by making current income distributions only to the income beneficiary or his or her respective living lineal descendants, *per stirpes*.

It is represented that once the successor trustees began receiving assets from the Testamentary Trust, it became apparent that the terms of the Testamentary Trust relating to distributions prior to termination needed to be clarified. The current income beneficiaries, the contingent remainder beneficiaries, and the trustees of the Trusts 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 n.

Paragraph 1 of the Consent and Stipulation provides that each of Trust A and Trust B (collectively, the Separate Trusts) and Trust C and Trust D (collectively, the Sub-Trusts) will terminate at the same time on the death of the survivor between Grandson 1 and Granddaughter. Paragraph 2 provides that on the final termination, the assets of the Separate Trusts and Sub-Trusts are to remain separated along the family lines of Decedent's grandchildren except as otherwise specifically provided in the Consent and Stipulation.

Paragraph 3 of the Consent and Stipulation provides that on the final termination, the balance of the assets in each Separate Trust is to be distributed to the then living descendants of the Grandchild for whose benefit the Separate Trust was created.

Paragraph 4 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 the Sub-Trust's income beneficiary. In the event that the income beneficiary is not then living, the balance of the assets of the deceased income beneficiary's Sub-Trust is to be distributed to the deceased income beneficiary's then living 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 Decedent 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.

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Paragraph 5 of the Consent and Stipulation provides that on the final termination, in the event that a Grandchild of Decedent has no living lineal descendants on the final termination, the balance of the assets of that Grandchild's Separate or Sub-Trust in the same family line is to be distributed to the descendants of Decedent *per stirpes*. Paragraph 6 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 Item V of the Trust.

Paragraph 8 of the Consent and Stipulation provides that prior to final termination, the trustee is to pay the income from a Separate Trust semiannually (or more often in its discretion) to the Grandchild of Decedent for whom the Separate Trust was created.

Paragraph 9 of the Consent and Stipulation provides that after the death of a Grandchild of Decedent, the trustee is to pay the income from the Separate Trust semiannually (or more often in its discretion) to the lineal descendants of the Grandchild who are living at the time of the respective distributions, *per stirpes*, subject to the "Distribution of Income" section of the Testamentary Trust directing the accumulation of income.

Notwithstanding the foregoing, if

- a. one or more of the descendants of a deceased Grandchild request the trustee to divide the Separate Trust into 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 Testamentary Trust to lose its "grandfathered" exemption from the federal generation-skipping transfer tax,

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

Paragraph 10 of the Consent and Stipulation provides that in the event that, prior to termination, any Separate Trust ceases to have a current income beneficiary (e.g., a Separate Trust's sole income beneficiary dies without then-living lineal descendants) the balance of such Trust's assets is to be divided *per stirpes* among the then-living lineal descendants of Decedent and the share of such descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

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Paragraph 11 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 Decedent for whom the Sub-Trust was created. Paragraph 12 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 is living at the time of the respective distributions, *per stirpes*, subject to the "Distribution of Income" section of the Testamentary Trust directing the accumulation of income.

Notwithstanding the foregoing, if

- d. one or more of the descendants of a deceased Grandchild request the trustee to divide the Sub-Trust into further sub-trusts for the descendants,
- e. the trustee in its discretion considers it advisable to make such a division, and
- f. The Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Testamentary Trust to lose its "grandfathered" exemption from 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 Grandchild. Each share created for a descendant is to be held and administered as a sub-trust for the benefit of that descendant.

Paragraph 13 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 balance of that Sub-Trust's assets is to be divided *per stirpes* among the then-living descendants of the income beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living descendants, or if none, *per stirpes* among the then-living lineal descendants of Decedent. Each share created for a then-living descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 14 of the Consent and Stipulation provides that each Separate Trust and each Sub-Trust need not have the same trustee.

It is represented that the Testamentary 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:

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1. The division of the Testamentary Trust did not cause Trust A, Trust B, Trust C, and Trust D to be subject to the GST tax.

2. The modification and clarification of the administrative provisions of the Testamentary Trust, as provided in the Court Order, dated m, and the Consent and Stipulation will not affect the GST exempt status of Trust A, Trust B, Trust C, and Trust D.

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.

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 --

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(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 Testamentary Trust is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Decedent's generation. The Testamentary 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 the proposed division of the Testamentary Trust into separate Trusts and the proposed modification of the provision relating to the appointment of successor individual trustees will not cause the Trusts 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 Testamentary Trust, will remain the same and the timing of the termination of the 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 Testamentary Trust corpus into separately administered Trusts. Therefore, the proposed division of the Testamentary Trust into separate 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 Testamentary Trust. Accordingly, we conclude that the proposed division of the Testamentary Trust into separate Trusts will not cause distributions from the resulting Trusts to be subject to the GST tax imposed by chapter 13, provided that no additions are made to the Trusts after September 25, 1985.

In addition, we conclude that the modification and clarification of the Separate Trust and 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 Separate Trusts or the Sub-Trusts to skip persons nor terminations of interests of non-skip persons in the Separate Trusts or Sub-Trusts will be subject to the GST tax.

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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

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Assistant Chief Counsel
(Passthroughs and Special Industries)