

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:7 / PLR-107162-00

Date:

November 1, 2000

Legend:

Decedent

Trust 1

Trust 2

A

B

C

D

E

F

G

H

J

K

L

M

N

P

Bank

State

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Court

Date 1

Date 2

Date 3

Dear

We received your letter dated March 23, 2000, requesting a ruling that the proposed partition of Trust 2 into five separate trusts will not cause the five separate trusts to be subject to the Generation-Skipping Transfer (GST) tax imposed by § 2601 of the Internal Revenue Code. This letter responds to your request.

Decedent died testate on Date 1, survived by Decedent's spouse, A, and Decedent's children, B, C, D, E, and F.

Article VI of Decedent's will directed the trustees to create Trust 1, for the benefit of A, and Trust 2. However, the trustees did not create Trust 1 because A filed an election in accordance with State law to take against Decedent's will. A died on Date 2.

The terms in Article VI of Trust 2 provide that the trustees are to collect the income from Trust 2. After deducting all necessary taxes and expenses incident to the management and operation of Trust 2, the trustees are to divide the net income into 31 equal parts and to pay the 31 parts in quarterly installments as follows:

- (1) Five of the 31 parts the trustees are to pay to B for and during B's lifetime;
- (2) Five of the 31 parts the trustees are to pay to C for and during C's lifetime;
- (3) Seven of the 31 parts the trustees are to pay to D for and during D's lifetime;
- (4) Seven of the 31 parts the trustees are to pay to E for and during E's lifetime;
- (5) Seven of the 31 parts the trustees are to pay to F for and during F's lifetime.

The terms in Article VI of Trust 2 also provide that upon the death of any of Decedent's children, or at Decedent's death, whichever occurs later, the trustees are to pay, during the continuance of Trust 2, the income otherwise payable to such deceased child to his or her then living lawful issue, if any there be, per stirpes; or to the then living lawful issue of any deceased issue, per stirpes, issue in every case to receive that share of income to which its parent, if living, would have been entitled. In default of such issue, however, during the term of Trust 2, the share of income thus paid is to be divided equally among and added to the shares of Decedent's then living children and the then living lawful issue of any of Decedent's children who may then be dead, or the issue of any of such deceased issue, issue in every case to take the share to which its

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parent, if living, would have been entitled.

The terms in Article VI of Trust 2 further provide that Trust 2 is to continue for a period of twenty full years from the date of death of the last survivor of Decedent's named children, during which time the income therefrom is to be paid as hereinabove directed. At the expiration of twenty full years from the date of death of the last survivor of Decedent's children, Trust 2 is to cease and determine, and the entire trust estate, together with all income which has accrued but has not been distributed, is then to be distributed, free and discharged of all trusts, to those persons then receiving income, each such person to receive in distribution that part of the principal of Trust 2 upon which he or she is entitled to receive income at the time of such distribution.

In Article XII of Decedent's will, Decedent nominated and appointed A and B to be the trustees of Trust 1 and Trust 2. Upon the death of either one of the trustees, or upon the inability or refusal of either of them to act as trustee, Bank is to act as trustee instead. Bank also is to act as surviving trustee for Trust 1 and Trust 2. After the death of A, Bank renounced its right to serve as trustee. Since A's death and Bank's renouncement of its right to serve as trustee, B has been the sole trustee of Trust 2.

C and D, two of the income beneficiaries named in Decedent's will, died after Decedent. The interests of C and D have passed to their issue in accordance with the terms in Article VI of Decedent's will. Currently, the income beneficiaries of Trust 2 and their shares in the income of Trust 2 are as follows:

- (1) B - Five parts;
- (2) G (daughter of C) - Five parts;
- (3) H, J, K, and L (children of D) - Seven parts;
- (4) E - Seven parts;
- (5) F - Seven parts.

The administration of Trust 2 has been marred by significant family disharmony. To resolve the family disharmony, the members of Decedent's family, including the current beneficiaries of Trust 2, signed, on Date 3, an overall settlement agreement to sell some of the assets held by Trust 2 and to partition Trust 2 into five separate trusts.

As part of the settlement agreement, the income beneficiaries have agreed to seek a Court order partitioning Trust 2 into five separate trusts. The Court order will be sought under authority of § 7191 of State law. Under the proposed partition of Trust 2, five trusts will be established for the separate benefit of the current income beneficiaries of Trust 2 and the descendants of those beneficiaries.

After the proposed partition of Trust 2, each of the five separate trusts will continue to be governed fully by the terms of Decedent's will. The trustee will partition Trust 2 by dividing the Trust 2 assets into 31 equal shares. The 31 equal shares will be divided as follows:

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- (1) Five shares for B;
- (2) Five shares for G (daughter of C);
- (3) Seven shares for H, J, K, and L (children of D);
- (4) Seven shares for E;
- (5) Seven shares for F.

Specifically, five of the 31 shares are to be held in a separate trust, the income of which is to be paid to B for life and, upon B's death, to B's then living issue, per stirpes. Five of the 31 shares are to be held in a separate trust, the income of which is to be paid to G for life and, upon G's death, to G's then living issue, per stirpes. Similarly, the remaining three separate trusts, each of which consists of seven of the 31 shares, are to benefit E, F, and the children of D.

As required under Article VI of Decedent's will, upon the death of an income beneficiary, his or her share of income interest is to be distributed to his or her then living issue or to the then living issue of any deceased issue, per stirpes. In default of such issue, however, during the term of the trusts, the share of income thus paid is to be divided equally among and added to the shares of Decedent's then living children hereinabove named and the then living lawful issue of any of Decedent's children who may then be dead, or the issue of any of such deceased issue, issue in every case to take the share to which its parent, if living, would have been entitled.

The five separate trusts will continue for a period of twenty full years from the date of death of the last survivor of Decedent's sons and daughters named above, during which time the income therefrom is to be paid as hereinabove directed. At the expiration of twenty full years from the date of death of the last survivor of Decedent's said sons and daughters, the trusts are to cease and determine, and the entire trust estate of each trust, together with all income which has theretofore accrued thereon and which has not theretofore been distributed, is to be distributed, free and discharged of all trusts, to those persons then receiving income thereunder, each such person to receive in distribution the principal of the trust estate upon which he or she is entitled to receive income at the time of such distribution.

In conjunction with the proposed partition of Trust 2, B will resign as trustee of Trust 2 and the five separate trusts. Pursuant to the laws of State, Court will appoint successor trustees. It will be proposed to Court that the following individuals be appointed as successor trustees of the five separate trusts:

- (1) M for the trust for the benefit of B and B's issue;
- (2) G for the trust for the benefit of G and G's issue;
- (3) H for the trust for the benefit of the children of D (H, J, K, and L) and their issue;
- (4) N for the trust for the benefit of E and E's issue;
- (5) P for the trust for the benefit of F and F's issue.

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You represent that no additions, actual or constructive, have been made to Trust 2 after September 25, 1985.

You have requested that the proposed partition of Trust 2 into five separate trusts and the proposed allocation of the assets of Trust 2 among the five trusts on a proportionate basis based on the current income interests of the beneficiaries: (i) will not be a constructive addition to the trusts and; (ii) will not otherwise cause the five separate trusts to lose their grandfathered exempt status under the GST tax provisions of § 2601 of the Code, § 26.2601-1(b)(1) of the Generation-Skipping Transfer Tax regulations, and § 1433(b)(2)(A) of the Tax Reform Act of 1986.

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

Section 2611(a) provides that, for purposes of the GST tax, the term “generation-skipping transfer” means –

- (1) a taxable distribution,
- (2) a taxable termination, and
- (3) a direct skip.

Section 2612(a)(1) provides that, for purposes of the GST tax, the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless –

(A) immediately after such termination, a non-skip person has an interest in such property, or

(B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) provides that, for purposes of the GST tax, the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Section 2612(c)(1) provides that, for purposes of the GST tax, the term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that, for purposes of the GST tax, the term “skip person” means –

- (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

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(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 such trust, and

(ii) at no time after such transfer may a distribution (including distribution on termination) be made from such trust to a non-skip person.

Section 2613(b) provides that, for purposes of the GST tax, the term "non-skip person" means any person who is not a skip person.

Section 26.2601-1(b)(1)(i) of the GST Tax Regulations provides that the provisions of chapter 13 do 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)(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.

Any amendment to a trust that is exempt from the GST tax will cause the trust to lose its exemption if the amendment modifies or otherwise changes the quality, value, or timing of any of the powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of the trust.

Based on the information submitted and the representations made and if, under authority of § 7191 of State law, the Court partitions Trust 2 as proposed in the settlement agreement, we conclude that the proposed partition of Trust 2 into five separate trusts and the proposed allocation of the assets of Trust 2 among the five trusts on a proportionate basis based on the current income interests of the beneficiaries will not modify or otherwise change the quality, value, or timing of any powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of Decedent's will. Thus, we conclude that if the Court partitions Trust 2 as proposed in the settlement agreement, the proposed partition of Trust 2 into five separate trusts and the proposed allocation of assets of Trust 2: 1) will not be a constructive addition to the trusts and 2) will not otherwise cause the five separate trusts to lose their grandfathered exempt status under the GST tax provisions of § 2601 of the Code, § 26.2601-1(b)(1) of the Generation-Skipping Transfer Tax regulations, and § 1433(b)(2)(A) of the Tax Reform Act of 1986.

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This ruling is based on the facts presented and the applicable law in effect on the date of this letter, and is contingent on obtaining a Court order partitioning Trust 2, as proposed in the settlement agreement. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

Except as specifically ruled herein, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions or any other provisions of the Code.

This letter 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,
Christine E. Ellison
Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: Copy for § 6110 purposes