

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

May 5, 2000

Re:

Legend

Family Trust =
Mother =
Decedent =
Child 1 =
Child 2 =
Child 1 Family Trust =

Grandchild 1 =
Grandchild 2 =
Child 2 Family Trust =

Corporation =
Individual 1 =
Individual 2 =
State =
Local Court =

Dear :

This is in response to your letter of March 13, 2000, and prior correspondence, in which you requested a ruling concerning the generation-skipping transfer tax consequences of a proposed division of two trusts.

Decedent was granted a testamentary limited power to appoint the assets of Family Trust that was established under the will of her mother (Mother) in 1955. Decedent executed a will in 1989, and amended the will by a codicil executed in 1990 and a codicil executed in 1991. Decedent died in 1992, a resident of State. Decedent was survived by Child 1 and Child 2. In Item IV of her will, Decedent exercised the limited power of appointment by appointing the property in Family Trust for the benefit

of the issue of her children. Under Item IV, the trustees are to divide the property into as many shares (separate trusts) as there are children of Decedent who survive her.

Item IV, Paragraph A, provides that the income from each of the separate trusts shall be divided, annually, into as many shares as there are living children of the child with respect to whom the trust was established (Decedent's grandchildren). The trustees may use, for a grandchild's benefit, so much of the grandchild's portion of the income as the trustees deem to be required (in addition to other income available to the grandchild from all other sources known to the trustees) for the grandchild's benefit and retain and reinvest for the benefit of the grandchild any excess income until the grandchild reaches age twenty-one.

Item IV, Paragraph B, provides that the income from any trust created for the benefit of the issue of any child of Decedent who has no children at Decedent's death is to be accumulated and added to corpus until the time that the child has a child or children. If a child of Decedent should have no children within ten years following Decedent's death, or, if the child has a child (grandchild of Decedent) but the grandchild dies without leaving a sibling surviving, and the child thereafter has no child within ten years, the trustee shall pay over to the child any accumulated income from the separate trust and, thereafter, the trustees shall pay to the child the annual income until the time as the child has a child.

Item IV, Paragraph C, provides that, as each of Decedent's grandchildren attains the age of twenty-one years, the trustees shall pay over to the grandchild his or her entire share of net income from the trust.

Under Item IV, Paragraph D, any grandchild who has, at the time of the death of his or her parent who is Decedent's child, attained age 30, the trustee is to distribute upon the death of the parent of the grandchild one-third of the grandchild's share; if the grandchild has attained age 35, two-thirds of the grandchild's share, and if the grandchild has attained age 40, all of such grandchild's share. If a grandchild has not attained the stated ages prior to his or her parent's death, his or her share is to be distributed by the trustee to the grandchild after the death of Decedent's child who is the parent of the grandchild, one-third upon the attainment by such grandchild of age 30, an additional third upon the attainment by such grandchild of age 35, and the final third upon the attainment by such grandchild of age 40.

Item IV, Paragraph F, provides that, notwithstanding any contrary provision in Item IV (including but not limited to Paragraph D), but subject to Item IV, Paragraph G and H, the trustees of the trust in which Grandchild 2 becomes vested shall have complete and absolute discretion either: (1) to give to or expend on Grandchild 2's behalf, all or any part of the income whether current or accumulated, or all or any part of principal to which he may from time to time be entitled; or (2) to retain the income or principal or both for future distribution to Grandchild 2 as the trustees deem to be in

Grandchild 2's best interest. However, the power to accumulate income or principle shall in no event be construed as permitting the continuation of the trust beyond the expiration of twenty-one years after the death of the last of Decedent's children living at the time of Mother's death.

Item IV, Paragraph G, provides that all distributions of corpus or principal and of income shall be made at the times and upon the occurrence of events specified above, or twenty-one years after the death of the last of Decedent's children living at the time of Mother's death, whichever occurs earlier. There shall not be a postponement or suspension of the vesting, absolute ownership or power of alienation of any interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of twenty-one years. In the event any limitation or provision in Item IV violates any rule against perpetuities or any other restriction or limitation of law existing in State at the time of Decedent's death, then such provision or limitation shall be effective only so long as permitted by the rule against perpetuities or any other restriction or limitation of law existing in State at Decedent's death.

Item IV, Paragraph H, provides that notwithstanding other provisions of Trust, each of Decedent's grandchildren who survives her is absolutely vested in their share of the corpus. If any grandchild shall predecease his or her parent, the grandchild's share of corpus and accrued income shall be payable to the grandchild's estate.

Decedent was survived by, two children, Child 1 and Child 2, who are currently living. Under the terms of ITEM IV of Decedent's will, Family Trust was divided into two equal shares. One such share was placed in trust for the benefit of the issue of Child 1 (Child 1 Family Trust) and the other such share was placed in trust for the benefit of the issue of Child 2 (Child 2 Family Trust). Child 1 has two living children, Grandchild 1 and Grandchild 2, and they are the primary beneficiaries of the Child 1 Family Trust.

The trustees have represented that all distributions from the Child 1 Family Trust have been made equally to Grandchild 1 and Grandchild 2.

The primary beneficiaries of the Child 1 Family Trust have conflicting views on the appropriate investment strategies that should be followed by the trustees of their respective trusts. Accordingly, the trustees petitioned Local Court requesting that the Child 1 Family Trust be divided into two equal trusts (one trust each for the benefit of Grandchild 1 and Grandchild 2).

On March 13, 2000, the Local Court approved the division, subject to a favorable ruling from the Internal Revenue Service to the effect that the trusts will remain exempt from the generation skipping transfer tax. Under the court order, the terms of each successor trust remain exactly the same as the Child 1 Family Trust provisions. Each new trust will be funded by a pro rata division of each asset held in the Child 1 Family

Trust. To properly provide for the possibility of after-born children, the court order requires that each successor trust, in coordination with the appropriate other existing successor trusts, participate in the establishment of a new trust for each grandchild who is born after the division (after-born child) and who is determined to have rights in the Child 1 Family Trust. The funding of any such new trust will be pro-rata from the pre-existing successor trusts and the terms of any new trust will be identical to those of the successor trust.

In PLR 9040046, the Internal Revenue Service ruled that Decedent's testamentary exercise of her limited power of appointment granted under Trust would be the exercise of a limited power created under a trust that was irrevocable on September 25, 1985. Furthermore, the testamentary exercise by Decedent of the limited power of appointment would not be treated as a post-September 25, 1985, addition to the trust corpus and future transfers from the Child 1 Family Trust would not be subject to the generation-skipping transfer tax.

Corporation, Individual 1, and Individual 2 are the trustees of Child 1 Family Trust. The trustees have represented that there have been no additions to the Family Trust or the Child 1 Family Trust after September 25, 1985.

The trustees have requested a ruling that the successor trusts created under the division and any new successor trusts will remain exempt from the application of the generation-skipping transfer tax by reason of the effective date rules provided in § 1433(b)(2) of the Tax Reform Act of 1986.

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip person." Section 2611 defines a generation-skipping transfer as a taxable termination, a taxable distribution, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the generation-skipping transfer tax (GSTT) 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).

A modification of a trust that is otherwise exempt from the generation-skipping transfer tax under the Act will generally result in a loss of its exempt or "grandfathered" 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.

In this case, Mother established Family Trust in her will in 1955 and provided Decedent with a testamentary limited power of appointment to appoint the property in the Family Trust. Decedent died in 1992, and exercised the limited power of appointment by appointing the assets held in Family Trust to the Child 1 Family Trust

and the Child 2 Family Trust. Grandchild 1 and Grandchild 2 are the primary beneficiaries of the Child 1 Family Trust.

Local Court has executed an order, subject to a favorable letter ruling from the Service, dividing the Child 1 Family Trust into two trusts. Under the order, the provisions of each of the trusts will remain exactly the same as before the division. In addition, to properly provide for the possibility of after-born children, the order requires that each successor trust, in coordination with the appropriate other existing successor trusts, participate in the establishment of a new trust for each grandchild who is born after the proposed division (after-born child) and who is determined to have rights in the Child 1 Family Trust.

It has been represented that no additions have been made to Family Trust or the Child 1 Family Trust after September 25, 1985. After the division of the Child 1 Family Trust, the interests of the beneficiaries will remain the same and the timing of the termination of the resulting trusts will remain the same. Accordingly, the proposed division of the Child 1 Family Trust will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the original trusts.

Based on the information submitted and representations made, we conclude that the successor trusts created for each grandchild and any successor trusts created pursuant to the order of the Local Court will remain exempt from the application of the generation-skipping transfer tax by reason of the effective date rules provided in § 1433(b)(2) of the Tax Reform Act of 1986.

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

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 the 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and another authorized representative.

Sincerely yours,
Assistant Chief Counsel
(Passthroughs and Special Industries)
By George Masnik
Chief, Branch 4

Enclosure

Copy for 6110 purposes