

Internal Revenue Service

Number: **200112040**
Release Date: 3/23/2001
Index No.: 2601-00.00

Department of the Treasury

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Person to Contact:

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Refer Reply To:
CC:PSI:4 - PLR-114049-00
Date: December 20, 2000

Re:

Legend:

Settlor =
Child 1 =
Child 2 =
Child 3 =
Child 4 =
Trust Agreement 1 =

Trust Agreement 2 =

Trust Agreement 3 =

Trust Agreement 4 =

Trust Agreement 5 =

Trust Agreement 6 =

Trust Agreement 7 =

Trust Agreement 8 =

Trust Agreement 9 =

Trust Agreement 10 =

Trust Agreement 11 =

Trust Agreement 12 =

X =

Y =

Company =

Trustee 1 =
Trustee 2 =
Court =

Dear :

This is in response to a letter dated July 19, 2000, and subsequent correspondence, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of the trustees' proposed renunciation and release of authority.

Facts

The facts submitted and representations made are as follows. Prior to September 25, 1985, Settlor executed 12 Trust Agreements: Trust Agreements 1, 2, 3, and 4, creating four identical irrevocable trusts, one for the benefit of each of Settlor's children, Child 1, Child 2, Child 3, and Child 4, respectively, and Trust Agreements 5, 6, 7, and 8, creating four identical irrevocable trusts, one for the benefit of each of Child 1, Child 2, Child 3, and Child 4, respectively (the Children's Trust Agreements); and Trust Agreements 9, 10, 11, and 12, creating four identical irrevocable trusts, one for the benefit of the children of each of Child 1, Child 2, Child 3, and Child 4, respectively (the Grandchildren's Trust Agreements).

The 12 trusts created under Trust Agreements own, in the aggregate, X% of the voting stock and Y% of the nonvoting stock of Company. No additions, constructive or otherwise, have been made to the 12 trusts since September 25, 1985.

Under Article One of the Children's Trust Agreements, the net income of each trust is to be distributed in any proportions the trustees deem advisable among the beneficiary child, the child's spouse and issue, the spouses of such issue, the child's siblings and their spouses and issue, and the spouses of those issue. If the trustees determine that any payment of income to any beneficiary is insufficient to defray the beneficiary's costs of any illness, accident or other emergency, or to provide for the beneficiary's proper maintenance, support, or education, the trustees may distribute principal to the beneficiary for those purposes.

Under Article Two of the Children's Trust Agreements, each trust must terminate 21 years after the death of the last to die among Child 1, Child 2, Child 3, and Child 4 or, if earlier, when there are no remaining beneficiaries among the class of beneficiaries listed in Article One. However, the trustees may terminate a trust in whole or in part at any time they deem it to be in the best interest of the beneficiaries of the trust or for any other reason advisable. Upon any termination, the trustees will distribute the remainder to the then living child who is beneficiary, or, if none, to the then living issue of the child, or, if none, in equal parts among the other three trusts for Settlor's children established on the same date for which there are beneficiaries then living. If none among any of these individuals is then living, Article Two provides that:

[T]he trust property shall be transferred, delivered and paid over to such charitable organization or organizations as the Trustees shall select; provided that the organization or organizations shall be such that contributions to the same would qualify as charitable contributions for a purpose specified in section 170(c) of the Internal Revenue Code of 1954 as the same may be amended or supplanted by future legislation.

Article Four provides that :

Anything hereinbefore or hereinafter contained to the contrary notwithstanding, the Trustees shall have no power, authority or discretion in the management or distribution of the trust property which would cause the net income or the trust property to be taxable to the Settlor for Federal income or estate tax purposes. The Trustees are authorized to disclaim, renounce, release or limit, in whole or in part, such power, authority and discretion as they may deem advisable to accomplish such end or for any other reason.

Article Five of the Children's Trust Agreements provides the Trustees with broad power, including:

full power and authority, without the necessity of obtaining the consent of any court, to do all acts and to execute, acknowledge and deliver all instruments which would be lawful for them were they in their own rights the actual owners of [the trust] property.

Paragraph (1) of Article Five of the Children's Trust Agreements authorizes the Trustees to retain all of the investments or property, real or personal, which may become part of the trust property, and, in particular, to retain without diversification the property initially received from the Settlor, and any property received in exchange for it. The Trustees are expressly given unlimited discretion to exercise this authority to retain in kind investments and property, especially investments or property in which Settlor's family maintains a substantial interest.

Paragraph (8) of Article Five of the Children's Trust Agreements authorizes the Trustees:

To deal with any situation which may arise respecting the trust property or any part thereof in such manner as the Trustees shall deem advisable and for the best interests of the trust. The grant to the trustees of any specific power,

authority or discretion, or the failure to grant specifically herein any other power, authority or discretion, shall not be construed to limit or curtail in any way or to any extent said full and complete power, authority and discretion, which it is intended and directed shall be exercisable at all times by the Trustees respecting any and all matters of whatsoever character pertaining to the trust property or any part thereof, but only in a fiduciary capacity and in the interest of the beneficiaries hereunder.

Article Four of the Children's Trust Agreements provides that

[n]o Trustee of this trust shall have any right or power of choice in any discretionary distribution of income or principal or the termination in whole or in part of this trust if such Trustee benefits by any such distribution or termination.

The current trustees of all eight of the trusts established under the Children's Trust Agreements are Trustee 1 and Trustee 2. Trustee 1 is a director of Company. Trustee 2 is not related or subordinate to Settlor within the meaning of § 672(c) of the Code.

The trustees of Trust Agreement 3 propose to renounce and release their power under Article Two to distribute property to governmental entities described in § 170(c)(1).

Court has issued an order approving the renunciation.

The trustees have requested a ruling that the renunciation and release will not constitute an "addition" to the trust created under Trust Agreement 3 within the meaning of § 1433(b)(2)(A) of the Tax Reform Act of 1986, or otherwise cause the trust to lose exempt status for generation-skipping transfer tax purposes.

Law

Section 2601 imposes a tax on each generation-skipping transfer made by a transferor to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable

unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under §§ 2038 or 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) 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 will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification 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 for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer.

Analysis

In the present case, the trust established under Trust Agreement 3 was irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, have been made to the trust after that date.

Article Two of Trust Agreement 3 requires the trustees to select, and transfer trust property to, charities described in § 170(c), if the trust has terminated and no individual beneficiaries are then living. Thus, under Article Two, the trustees have the power and authority to transfer trust property from the trust to charities described in § 170(c)(1).

The trustees' proposed renunciation and release will limit the charitable organizations that may receive trust distributions to those described in § 170(c), other than § 170(c)(1).

Section 26.2601-1(b)(4)(i) discusses certain actions taken with respect to a trust which will not cause a trust to lose its exempt status. Under § 26.2601-1(b)(4)(i)(D), a modification will not cause an exempt trust to lose its exempt status, if the modification does not shift a beneficial interest in the trust to any beneficiary in a generation lower than the persons who held the beneficial interests 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 for in the original trust. A modification that does not result in an increase in the amount of a GST transfer or the creation of a new GST transfer will not cause the trust to lose its exempt status.

In this case, the proposed renunciation and release by the trustees will not result in a shift of any beneficial interest in the trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the renunciation and release. Further, the proposed renunciation and release will not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Further, the proposed renunciation and release will not constitute an "addition" to the trust within the meaning of § 1433(b)(2)(A) of the Tax Reform Act of 1986. Accordingly, based on the facts submitted and the representations made, the proposed renunciation and release will not cause the trust established under Trust Agreement 3 to lose its exempt status for generation-skipping transfer tax purposes.

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

This 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 yours,
George L. Masnik, Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

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