

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

December 16, 1999

Re:

LEGEND:

Settlor =
Spouse =
Corporation =

Affiliate =

Stock of Corporation A =

Bank =

State A =

State B =

Child A =

Child B =

Child C =

A =

B =

C =

D =

E =

Intervivos Trust =

Intervivos Trust A =

Intervivos Trust B =

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Dear _____ :

In a letter dated February 23, 1999, and subsequent submissions you request rulings under section 2601 of the Internal Revenue Code.

In 1965, Settlor and Spouse created and funded the Intervivos Trust. Child C was designated as trustee, and he has been the trustee since the inception of the trust. Bank was designated as successor trustee. In 1988, Corporation was substituted, by court order, as successor trustee in the place of Bank.

Under the provisions of the Intervivos Trust, the trust is to be held as two equal shares. One such share is Intervivos Trust A for the benefit of Child A, her children and other descendants. The other share is Intervivos Trust B for the benefit of Child B, her children and other descendants.

Intervivos Trust A:

Income distributions during Child A's lifetime:

Ninety percent of the Intervivos Trust A income was to be paid to or for the use of Child A through December 31, 1985. During that time, the remaining income was to be accumulated and added to principal. After December 31, 1985, and for the duration of Child A's life, 60 percent of the income is to be paid to or for the benefit of Child A. In addition, 30 percent of the income is to be paid to Child A's issue living at the time of distribution. The balance of the income is to be accumulated. Any income distributable to a minor may be held and distributed to him or her at age 21.

Income and principal distributions after Child A's death:

At Child A's death, Intervivos Trust A will be divided into shares for Child A's then living descendants per stirpes. Ninety percent of a share's income will be paid to the beneficiary of that share. The remaining income will be accumulated. One-third of the principal will be distributed to the beneficiary upon attaining age 24. One-half of the

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then principal will be distributed to the beneficiary upon attaining age 27. The balance of the share will be distributed to the beneficiary at age 30.

If a beneficiary dies before becoming entitled to distribution of the entire share, that share will be divided into per stirpial shares for the beneficiary's descendants. If the beneficiary does not leave descendants, the share will be divided per stirpes for the siblings of the beneficiary or their living issue. If the deceased beneficiary leaves no surviving issue, the property will be divided upon the principal of representation and either added to the shares then held for the brothers and/or sisters or for the issue of deceased brothers and/or sisters of the deceased beneficiary, or distributed to the former beneficiaries of the shares or to the then living issue of deceased former beneficiaries.

If the deceased beneficiary leaves no issue, brother or sister, or issue of deceased brother or sister then surviving, the remainder of that share will be divided and either added to existing shares of other beneficiaries of Intervivos Trust or, as the case may be, distributed to the then living former beneficiaries of such shares or to the then living issue of deceased former beneficiaries in such a manner as to maintain the principle of representation among the issue of Child A. In default thereof, the property will be distributed per stirpes free of trust to the then living issue of Settlor and Spouse. In any event, all of the remaining principal and undistributed income are to be distributed no later than 21 years from the date of death of the last to die of the issue of Settlor and Spouse living at the date of creation of the Intervivos Trust.

Distributions of principal during the entire trust term:

During the trust term, if any participating income beneficiary is in want of additional moneys for reasonable maintenance, comfort and support, or for expenses of accident, illness or other misfortune, or, in the case of a beneficiary under age 25, for reasonable education expenses, the trustee may, in discretion, after taking into consideration the beneficiary's other means of support, pay to or apply for the beneficiary the additional moneys, up to and including the entire principal of the trust share being held for that beneficiary.

Consultants:

While a corporate trustee is acting, Child A, Child B, and Child C are designated as consultants to the trustee with powers exercisable in a fiduciary capacity, primarily in the interest of the beneficiaries, and by a majority vote. The powers of the consultants are as follows: (1) to direct the corporate trustee to retain, sell, exchange, or lease any

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trust property, and to invest trust funds as is appropriate under State A law, and (2) to direct the corporate trustee on voting the stock of any corporation, including the Stock of Corporation A. However, no right of any character with respect to the Stock of Corporation A may be exercised by anyone other than a corporate fiduciary acting as trustee or a relative by blood or legal adoption of Child C.

If any of Child A, Child B, or Child C ceases to act as a consultant, he or she is to be replaced by A. If A fails to act as a consultant, then B is to be the successor consultant. There are to be three consultants while there is a corporate trustee. Therefore, the consultants and their successors are authorized to name a successor to fill his or her place. If a vacancy occurs and no successor has been named, the remaining consultants are to appoint successors so that there are three acting consultants.

Applicable state law:

The validity, construction, and all rights under the Intervivos Trust are to be governed by the laws of State A.

Intervivos Trust B

The provisions of Intervivos Trust B are identical to those of Intervivos Trust A except that, under Intervivos Trust B, Child B is the beneficiary in place of Child A, and Child B's children and other descendants are the beneficiaries in place of Child A's children and other descendants.

It is represented that no additions, actual or constructive, were made to the Intervivos Trust (including Intervivos Trust A and Intervivos Trust B) after September 25, 1985.

THE MODIFICATIONS

The trustee proposes to petition the appropriate court to make two modifications to each of the trusts.

The first modification: Substitution of successor trustees

One such modification would provide for Affiliate to be the successor trustee of the trusts. That is, if Child C ceases to act as trustee of Intervivos Trust A and Intervivos Trust B, he would be succeeded as trustee by Affiliate rather than Corporation. Child A

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is a resident of State A, and the Intervivos Trusts are to be governed by the laws of State A. Affiliate is located in State B, and the designation of Affiliate as trustee would cause the location of the trust assets and the principal place of trust administration of the Intervivos Trusts to change from State A to State B. However, the trustee has represented that the laws of State A would continue to govern the trusts for all purposes, both administrative and substantive.

The second modification: Designation of successor consultants

The second modification concerns the designation of successor consultants. Because the provisions of the Intervivos Trusts require consultants to act when there is a corporate trustee (such as Affiliate), and each of Child A, Child B, and Child C is designated as a consultant who may resign and name his or her successor, the following consultant changes will be made for the Intervivos Trusts.

For Intervivos Trust A and Intervivos Trust B, Child C will resign as consultant and designate his child, D, to take his place. For Intervivos Trust A, Child B will resign and designate Child A's child, C, to take her place. Thereupon, the consultants for Intervivos Trust A will be D, Child A, and C. For Intervivos Trust B, Child A will resign and designate Child B's child, E, to take her place. Thereupon, the consultants for Intervivos Trust B will be D, Child B, and E.

RULINGS REQUESTED

You have asked for rulings that the Intervivos Trust (including Intervivos Trust A and Intervivos Trust B) would not lose the exemption from the application of the generation-skipping transfer tax by reason of:

- (1) the substitution of successor trustee and subsequent change in the location of the trust assets and principal place of trust administration, or
- (2) the appointment of the successor consultants.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611 defines a generation-skipping transfer to mean a taxable termination, a taxable distribution, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act) and §26.2601-1(b)(1) of the Generation-skipping Transfer Tax Regulations provide that the tax does

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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).

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust, which is excluded from Chapter 13 (Tax on Certain Generation-Skipping Transfers) by section 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.

In the present case, it has been represented that no additions have been made to the trusts after September 25, 1985.

A modification of a generation-skipping trust that is otherwise exempt 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 the present case, the proposed appointment of successor consultants would not alter or expand the consultants’ powers provided under the trusts. Rather, the consultants’ powers would remain limited to the authority to direct the trustee’s investments, with no authority to influence the trustee’s discretionary distributions to the beneficiaries. Presently, Child C is the trustee of Intervivos Trust A and Intervivos Trust B. By court order, Corporation has been designated the successor trustee of these trusts. The trustee also proposes to modify Intervivos Trust A and Intervivos Trust B such that Affiliate rather than Corporation will be the trustee of each of these trusts.

Presently, all of the trusts are governed by the laws of State A. The designation of Affiliate as the successor trustee would cause the location of trust assets and the principal place of trust administration to change from State A to State B when Affiliate becomes the trustee. In this case, however, the trustee has represented that the laws of State A will continue to govern each trust for all purposes, both administrative and substantive. Therefore, the proposed substitution of Affiliate for Child C as successor trustee of the Intervivos Trusts would not alter the beneficial interests of any beneficiary.

Consequently, the two modifications to be made to Intervivos Trust (including Intervivos Trust A and Intervivos Trust B), as described above, are administrative in nature and will not result in any change in the quality, value, or timing of any

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beneficiary's interest.

We conclude that the proposed modifications, as described above, will not affect the exempt status of the trusts with respect to the generation-skipping transfer tax and, if no additions are made, all distributions from and the termination of the trusts will be exempt from the generation-skipping transfer tax.

Except as we have specifically ruled herein, we express no opinion under the cited provisions or under any other provision of the Code.

This ruling is based on the facts and applicable law in effect on the date of this letter. 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. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

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

Sincerely yours,
Assistant Chief Counsel
(Passthroughs and Special Industries)
By James F. Hogan
Acting Assistant to the Branch Chief
Branch 4

Enclosure
copy for 6110 purposes