

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:P&SI:4-PLR-116442-01

Date:

May 23, 2001

Re:

Legend

Settlor	=
Decedent	=
Child A	=
Child B	=
Child C	=
Trust	=
Trust A	=
Trust B	=
Trust C	=
Date 1	=
Date 2	=
Bank	=

Dear :

This is in response to your letter dated May 10, 2001, and prior correspondence submitted by your authorized representatives, requesting a generation-skipping transfer tax ruling concerning the partition of Trust.

On Date 1, Settlor created and funded Trust. Under the terms of Trust, Settlor's wife was to receive a monthly annuity for life, and upon her death, the Trust income was to be paid to Settlor's son, Decedent, for life. The Trust provides that upon the death of Decedent, the Trust income is to be paid to Decedent's children and descendants of a deceased child per stirpes, for life. The Trust also provides that the trustee may, in its uncontrolled discretion, distribute corpus to any current income beneficiary for proper maintenance and support. Under the terms of Trust, Trust is to terminate 21 years after the death of Decedent and the trustee is to distribute the trust corpus per stirpes to Decedent's living children and descendants of a deceased child. At the time of Decedent's death on Date 2, Decedent was survived by three children, Child A, Child B, and Child C. Currently, the trustee is distributing the income equally to all three children.

The trustee, Bank, proposes to petition the appropriate state court to divide Trust into three separate and equal successor trusts, with one successor trust for each of

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Decedent's children and their issue. Trust A will be established for the benefit of Child A and her descendants, Trust B will be established for the benefit of Child B and his descendants, and Trust C will be established for the benefit of Child C and her descendants. With respect to income and principal distribution, termination, and distribution of assets, each successor trust will have the same terms as Trust. In addition, the assets of Trust will be divided on a fractional basis and each of the successor trusts will be funded accordingly. The successor trusts will terminate 21 years after Date 2.

It is represented that there have been no additions to Trust, constructive or otherwise, after September 25, 1985.

The trustee has requested that the proposed partition will not result in a forfeiture of the Trust's exempt status for GST tax purposes.

Section 2601 imposes a tax on every generation-skipping transfer. Section 1431 of the Tax Reform Act of 1986, P.L. 99-514, 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(a) of the Generation-Skipping Transfer Tax (GSTT) Regulations provide that the tax will apply to any generation-skipping transfer made after October 22, 1986.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) provide that the generation-skipping transfer tax will 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 principal added to the trust after September 25, 1985 (or out of income attributable to principal so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, the Trust is considered to have irrevocable on September 25, 1985, because neither § 2038 nor § 2042 apply.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GSTT under §§ 26.2601-1(b)(1), (2), or (3) (an exempt trust) will not cause the trust to lose its exempt status. Section 26.2601-1(b)(4)(D) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, 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.

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In the present case, the Trust was created and became irrevocable on Date 1, and there have been no additions made to Trust after September 25, 1985. Accordingly, Trust is exempt from GSTT under § 26.2601-1(b)(1).

Under the facts as presented, the division of the Trust into successor trusts pursuant to the proposed partition will 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.

Accordingly, we conclude that Trust, Trust A, Trust B, and Trust C will be treated as trusts which were irrevocable on September 25, 1985, for purposes of § 1433(b)(2)(A) of the Tax Reform Act of 1986 and which remain exempt from the generation-skipping transfer tax.

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

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

Sincerely yours,
JAMES F. HOGAN
Assistant to the Branch Chief
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy of letter for section 6110 purposes