

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
April 29, 1999

Re:

Legend

Decedents	=
Daughter A	=
Daughter B	=
Son	=
Granddaughter A	=
Granddaughter B	=
Grandson	=
Great grandchild A	=
Great grandchild B	=
Great grandchild C	=
Great grandchild D	=
Great grandchild E	=
Great grandchild F	=
Great grandchild G	=
Great grandchild H	=
Great grandchild I	=
Trust	=

date 1	=
date 2	=

This is in response to your letter dated January 22, 1999, in which you request several rulings concerning the partition of Trust.

Decedents created an irrevocable trust (Trust) on date 1, for the benefit of Daughter A and her descendants. Under the terms of the Trust, the trustees are to pay Trust income to Daughter A for her life and, on her death, to her living children and the issue of any deceased children, by right of representation. The Trust will terminate 21 years after the death of Daughter A, at which time the principal is to be distributed to her descendants, per stirpes.

The Trust provides that there shall always be three

trustees, two of whom shall be individuals and one of whom shall be a trust company. If the number of trustees is reduced by death, resignation, or otherwise, a court shall appoint a successor. At the present time, two individuals and a bank are serving as cotrustees.

Daughter A had three children, Granddaughter A, Granddaughter B, and Grandson. Daughter A died on date 2. Grandson predeceased Daughter A. Grandson is survived by nine children. The Trust currently distributes one-third of the income to Grandson's issue, one-third to Granddaughter A, and one-third to Granddaughter B.

The trustees intend to file a petition in state court to divide the Trust into six trusts: (1) one-third of the principal to be held in trust for the benefit of Granddaughter A and her descendants; (2) one-third of the principal to be held in trust for the benefit of Granddaughter B and her descendants; (3) four-twenty-sevenths of the principal to be held in trust for the benefit of Great grandchildren A, B, C, and D and their descendants; (4) one-twenty-seventh of the principal to be held in trust for the benefit of Great grandchild E and her descendants; (5) one-twenty-seventh of the principal to be held in trust for the benefit of Great grandchild F and his descendants; and (6) three-twenty-sevenths of the principal to be held in trust for the benefit of Great grandchildren G, H, and I and their descendants. The successor trusts will be governed by the same dispositive provisions as the original Trust.

In addition, the current individual trustees intend to resign from the Granddaughter A trust and the Great grandchild E trust. The petition will asked the court to appoint one of Granddaughter A's daughters and a third-party individual to replace the resigning individual trustees of Granddaughter A's trust and to appoint Great granddaughter E and the same third-party individual to replace the resigning individual trustees of Great Granddaughter E's trust.

It is represented that under state law, Trust may be partitioned in a pro rata manner. In particular, the assets of Trust will be divided pro rata except to the extent a pro rata division would be impractical or impossible due to the nature of the investment (i.e., fractional shares of stock or unmarketable units of bonds). It is further represented that no additions have been made to the Trust since September 25, 1985.

The following rulings have been requested:

1. The proposed division of the Trust into six successor trusts will not subject either the Trust or the successor trusts

to the generation-skipping transfer tax imposed under § 2601.

2. The appointment of new trustees to two of the successor trusts will not subject the two trusts to the generation-skipping transfer tax.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 26, 1986.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. However, this exemption does not apply to additions (actual or constructive) that are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust that is otherwise exempted from the application of Chapter 13 (the GST tax) by § 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.

A modification of a trust that is otherwise exempt for GST tax purposes under the Act will generally result in a loss of its "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.

You have represented that the Trust was irrevocable on September 25, 1985, and that no additions have been made to the Trust after that date.

Based on the facts submitted and representations made, we conclude that the proposed partition will not alter the quality, value or timing of any powers, or beneficial interests, rights or expectancies originally provided for under the terms of the Trust. Therefore, the partition, as proposed, will not subject the Trust, or any trust created under the partition, to the generation-skipping transfer tax.

Furthermore, we conclude that the resignation of the current individual trustees of Granddaughter A's trust and Great granddaughter E's trust, and the appointment by the court of a daughter of Granddaughter A and a third-party individual as the individual trustees of Granddaughter A's trust and the court

appointment of the same third-party individual and Great grandchild E as the individual trustees of Great Granddaughter E's trust relates to the administration of the trusts and follows the terms of the original trust with respect to the replacement of individual cotrustees. Thus, we conclude that the appointment of new trustees will not subject the Trust, the successor Granddaughter A trust, or Great granddaughter E trust to the application of the generation-skipping transfer tax.

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 the 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.

Except as specifically ruled above, we express no opinion about the federal tax consequences of the transaction described above under any other provisions of the Code.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

This ruling letter 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,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
Katherine A. Mellody
Senior Technician Reviewer
Branch 4

Enclosure

Copy for section 6110 purposes