

Internal Revenue Service

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Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4 - PLR-139674-01
Date: JULY 19, 2002

In re:

Legend:

Settlor =
Trust =

Beneficiary =
A =
Date =
Court =

State =

Dear :

This responds to your letter dated July 10, 2001, and subsequent correspondence, requesting rulings regarding the generation-skipping transfer (GST) tax consequences of the proposed modification of certain trusts.

FACTS

The facts submitted and representations made are as follows. On Date, Settlor created separate irrevocable trusts for the benefit of each of his grandchildren and great-grandchildren. The terms of all the trusts are substantially identical. The trust at issue in this ruling request, Trust, was established for the benefit of Beneficiary. A is currently serving as trustee.

Article Five, Paragraph B. provides as follows:

The Trustee shall accumulate the income of the trust estate and may pay to the beneficiary as much of the accumulated income and principal thereof as the Trustee shall determine in the Trustee's discretion to be necessary and appropriate for the beneficiary's support, education, care and maintenance, in accordance with the beneficiary's accustomed standard of living.

Article Five, Paragraph B.1. provides:

Upon the last to occur of (i) the attainment of age 35 by the beneficiary or (ii) the death of all Trustees identified in Exhibit "A" hereto as the "Measuring Lives," this Trust shall terminate and the trust estate shall be distributed, free of trust, to the beneficiary. If the beneficiary dies before becoming entitled to distribution of the trust estate the trust estate shall be distributed, free of trust, to the beneficiary's then living issue, by right of representation, or if there are no such then living issue, to such of the issue of the Trustees identified in Exhibit "A" hereto as the Measuring Lives as are then living, by right of representation. However, if any part of the trust would be distributed to a person for whose benefit a trust is then being administered which is substantially identical to the trust created by this instrument, that part shall instead be added to that trust and shall thereafter be administered according to its terms.

Article Six, Paragraph I provides that income and principal of the trust estate shall not be utilized to discharge the legal obligation of any person to support a trust beneficiary.

The parties desire to facilitate Trust's qualification as a qualified subchapter S trust for purposes of § 1361 of the Internal Revenue Code. Therefore, as permitted under the laws of State, the Trustees and the beneficiaries propose to petition the Court with jurisdiction over Trust to obtain an order from the Court approving the following proposed modification of Article Five, Paragraph B. to read as follows:

The Trustee shall distribute all of the income (within the meaning of Section 643(b) of the Internal Revenue Code) of the trust estate currently and may pay to the beneficiary as much of the principal thereof as the Trustee shall determine in the Trustee's discretion to be necessary and appropriate for the beneficiary's support, education, care and maintenance, in accordance with the beneficiary's accustomed standard of living.

You represent that no additions, actual or constructive, have been made to Trust since September 25, 1985.

We have been asked to rule that the proposed modification will not constitute an addition to corpus and will not affect the grandfathered status of Trust for generation-skipping transfer tax purposes.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of Subchapter B).

Under § 1433(a) of the Tax Reform Act of 1986, the GST 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 GST 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.

In the present case, Trust was irrevocable on September 25, 1985, and it is represented that no additions, actual or constructive, have been made to Trust after that date. The proposed modification will not result in a shift of any beneficial interest to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the proposed division. In addition, the proposed modification will not extend the time for vesting of any beneficial interest beyond the period provided for in the trust instrument. Further, the proposed modification will not constitute an "addition" to 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, we conclude that the proposed modification will not subject Trust to GST tax by reason of § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(4)(i)(D). Therefore, after the modification, Trust will continue to be exempt from the GST tax

imposed under § 2601 provided there are no additions to the trusts after September 25, 1985.

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,

By _____
George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes

cc: