

Internal Revenue Service

Department of the Treasury

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LEGEND:

Trust =

Decedent =

a =

b =

c =

d =

e =

Grandson 1 =

Grandson 2 =

f =

A =

B =

Spouse =

Son 1 =

C =

Son 2 =

D =

g =

Granddaughter =

State =

h =

Dear Sir:

In a letter dated, August 5, 1998, you requested rulings concerning the generation-skipping transfer (GST) tax consequences relating to the clarification of the Trust. This letter responds to your request.

The information submitted and representations made are summarized as follows: Decedent died testate on a. Decedent's will was admitted to probate on b. The court issued its Judgement Settling First and Final and Supplemental Account and Report of Executor and of Final Distribution under the Will, which established the Trust. Currently, the Trust has assets worth between c and d, which yield approximately e in annual net income. The Trust provides for various payments of income to Decedent's spouse, Decedent's sons and their spouses, and Decedent's grandchildren and their spouses.

Paragraph B.8 and 9 of the Trust provides that each of Grandson 1 and Grandson 2 is to receive f percent of the net income for life. On the deaths of Grandson 1 and Grandson 2, each of their spouses (A and B, respectively) is to receive f percent of the net income during the period that she is not married. All right of either A or B to receive net income from the Trust is to cease and terminate on her remarriage and is not to be revived on the termination of the marriage whether by death, divorce, or remarriage.

Paragraph G of the Trust provides that the Trust is to terminate on the death of the last survivor of Spouse, Son 1, his spouse, C, and his children, and Son 2, his spouse, D, and his children. On the termination of the Trust, the corpus and the accumulated income, if any, are to be distributed, g to the descendants of Son 1, by right of representation, and not per capita, and g to the descendants of Son 2, by right of representation, and not per capita. If Son 1 has no descendants then living, the entire corpus and accumulated income, if any, is to be distributed to the descendants of Son 2 by right of representation, and not per capita. If Son 2 has no descendants then living, the entire corpus and accumulated income, if any, is to be distributed to the descendants of Son 1 by right of representation, and not per capita. If neither Son 1 nor Son 2 has any living descendants, the entire corpus and accumulated income, if any is to be distributed to Decedent's heirs at laws determined by the laws of State in effect then.

Spouse, Son 1, Son 2, and D are all deceased. Son 1 was survived by his spouse, C, and three children, Grandson 1, Grandson 2, and Granddaughter. Son 2 died without issue. Thus, the Trust will terminate on the death of the last survivor of C, Granddaughter, Grandson 1, and Grandson 2.

If Grandson 1 and Grandson 2 die survived by their respective spouses, A and B, then A and B each is to receive f percent of the net income during the period that she is not married. Taxpayers are concerned that if C, Granddaughter, Grandson 1,

and Grandson 2 all predecease A and B, the Trust will terminate and thereby "prematurely" terminate A and B's income interests prior to their deaths.

It is represented that State law authorizes the court having jurisdiction to determine the terms of a trust. If all the beneficiaries of an irrevocable trust consent, they can compel the modification and clarification of that trust. The court is authorized to modify the administrative or dispositive provisions of a trust to effectuate the settlor's intentions.

All the beneficiaries of the Trust have agreed that Decedent's intent was that A and B each would be entitled to a f percent income interest after the deaths of their husbands as long as they are alive and do not remarry. Accordingly, the beneficiaries wish to clarify the language of the Trust to provide that in order to satisfy the requirement of retaining f, or a total of h, of the Trust property in continuing trust in the event that C, Granddaughter, Grandson, and Grandson 2 all predecease A and B, the trustee may divide the trust assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. The shares need not be segregated into separate trusts. The continuing trust is to remain subject to the terms of the Trust except that all the net income is to be paid to A and B. On the death or remarriage of either A or B, the continuing trust will terminate with respect to her share and be disposed of in accordance with the terms of the Trust.

You have requested a ruling that the proposed clarification of the Trust will not cause the Trust to become subject to the GST tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax regulations provides that the tax does not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping

transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate or gift tax.

Section 2612(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person" to mean --

(1) a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or

(2) a trust --

(A) if all interests in such trust are held by skip persons, or

(B) if --

(i) there is no person holding an interest in the trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

An amendment to an exempt trust that modifies or otherwise changes the quality, value, or timing of any of the powers, or beneficial interests, rights, or expectancies originally provided under the terms of the trust will cause the trust to lose its exemption from the GST tax.

We have examined the proposed clarification of the Trust that the parties submitted in the context of relevant case law addressing the issues. We believe that the proposed clarification fairly reflects the relative merits of the positions of the respective parties. Accordingly, based on the information submitted and the representations made, we conclude that the interests received by the parties under the proposed clarification, both with respect to the nature of the interests and their economic value, are consistent with the relative merit of the positions of the parties. Therefore, we conclude that the proposed clarification does not alter the intended quality, value, or timing of the interests Decedent created in the Trust. Further, we conclude that the proposed clarification will not cause the Trust, or any distributions from the Trust, to be subject to the GST tax, provided no additions are made to the Trust.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

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

Sincerely yours,

Christine E. Ellison

Christine E. Ellison
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Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)