

Internal Revenue Service

Number: **202013004**

Release Date: 3/27/2020

Index Number: 2601.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-108639-19

Date:

October 07, 2019

Re:

Legend

Father
Mother
Son
Wife
Trust
Trust A

Trust 1

Trust 2

Trust 3

Trust 4

Trust 5

Trust 6

Trust 7

Trust 8

Trust 9

Date 1
Date 2
Date 3
Date 4
Date 5
Date 6

Date 7
County Court
Probate Court
State Statute
State

a
b

Dear :

This letter responds to your authorized representative's letter dated March 28, 2019 requesting a ruling concerning the generation-skipping transfer (GST) tax consequences of certain proposed modifications to several trusts.

The facts and representations submitted are summarized as follows:

On Date 1, a date that is prior to September 25, 1985, Father and Mother, Father's wife, created Trust, an irrevocable trust, for the benefit of their son, Son. Trust is subject to the laws of State.

On Date 2, a settlement agreement was approved by County Court. The settlement agreement provided, in relevant part, that Trust would be partitioned into two trusts, Trust A and Trust B. With the exception of Son's wife, Wife, the beneficiaries of Trust A are different from the beneficiaries of Trust B. Pursuant to the settlement agreement, Son and Wife released any power of appointment that they may have had over Trust A. On Date 4, the original trust agreement for Trust was amended and restated.

Article III of the amended trust agreement provides, in relevant part, that during the term of Trust A, the trustee could not make distributions of corpus to Son. At the time of the death of Son, his equitable interest in said trust estate, unless disposed of otherwise by Son, shall pass to and vest in his heirs in accordance with the laws of descent and distribution then in force, applicable to the equitable interest of Son in said Trust estate.

Article IV, section 3 of the amended trust agreement provides, in relevant part, that the trustee had the power, with the advice and consent of at least one member of the Advisory Board, to make discretionary distributions of net profits of Trust A to Son.

Article IV, section 2 provides that Trust A is to continue until 21 years after the death of Son. At that time, the trustee is instructed to wind up the affairs, liquidate the assets, and distribute the same among the then existing beneficiaries.

On Date 3, the trustee of Trust A petitioned Probate Court to modify the trust to provide that, upon the death of Son, Trust A is to be divided into separate shares for his

heirs. If Wife survives Son, one-third of Trust A shall be allocated to her share and the other two-thirds shall be divided into shares for the children and descendants of Son. Each such share is separate, and the successor Trust A beneficiaries do not become beneficiaries of an undivided trust. Consequently, the interests and powers of a successor Trust A beneficiary with respect to his or her share extend only to that successor Trust A beneficiary's respective share and not to any share held for any other beneficiary. During the 21 years following Son's death, the successor Trust A beneficiaries are not entitled to distributions of corpus, but may receive discretionary distributions of net profits.

Son died on Date 5. As a result of Son's death, and various disclaimers made by Son's heirs, the following separate trusts were created from Trust A: Trust A, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, and Trust 9. Trusts 1 through 9 are collectively referred to as the Trust A Successor Trusts. The Trust A Successor Trusts are governed by the same provisions as Trust A.

On Date 6, the trustees and Advisory Board Members of Trust A and the Trust A Successor Trusts, with the consent of the beneficiaries of the Trust A Successor Trusts, petitioned Probate Court to modify the trust agreement with respect to Trust A. In relevant part, Trust A will be modified to provide that if property is to be distributed upon the termination of Trust A to a person who has not then attained b years of age, the trustee shall make payment or distribution of that property to the trustee to be held in a continuing trust for the continuing beneficiary. During the duration of a continuing trust, the trustee shall distribute to or for the benefit of the continuing beneficiary so much of the income and principal of such continuing Trust as the trustee, in the trustee's sole and absolute discretion, deems necessary and appropriate to provide for the continuing beneficiary's health, education, maintenance, and support in accordance with the continuing beneficiary's station in life, considering all other sources of income available to the continuing beneficiary. In addition, if the continuing beneficiary has not attained the age of a on the termination date of Trust, the trustee shall distribute one-half of the assets of the continuing Trust when he or she attains the age of a. If the continuing beneficiary has attained the age of a on the termination date of Trust, but has not attained the age of b, the trustee shall distribute one-half of the assets of the continuing trust to the continuing beneficiary on the termination date of Trust.

The Date 6 petition further provides that the continuing trust shall terminate when the continuing beneficiary attains age b or dies, whichever occurs first. At that time, the trustee shall deliver all remaining property then on hand in the continuing trust to the continuing beneficiary, or if the continuing beneficiary is not alive to whomever the continuing beneficiary appoints by will (including the continuing beneficiary's estate, creditors, or creditors of the estate). If the continuing beneficiary is not then living and fails to exercise the general power of appointment, the trustee shall deliver all property in the continuing trust to the continuing beneficiary's probate estate.

On Date 7, Probate Court issued an order, approving the petition, subject to a favorable letter ruling from the Internal Revenue Service.

State Statute provides that on the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if the order is not inconsistent with a material purpose of the trust.

You have requested the following ruling:

The proposed modification will not cause Trust A or the Trust A Successor Trusts to lose their exemption from the GST tax of chapter 13 of the Internal Revenue Code.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was 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)(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 under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) 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. A modification of an exempt trust

will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST or the creation of a new GST.

In this case, Trust A was irrevocable prior to September 25, 1985. The amended trust agreement provides for outright distribution to the beneficiaries upon the termination of Trust A and the Trust A Successor Trusts, 21 years after the death of Son. Under the proposed modification of the trust agreement, any share upon the termination of Trust A and the Trust A Successor Trusts distributable to a beneficiary who is under the age of b, will be held in a continuing trust for that continuing beneficiary. Each continuing beneficiary will have a testamentary general power of appointment with respect to the property. Under § 2041(a)(2), the continuing beneficiary's trust property will be includible in his or her estate at his or her death. Further, each continuing beneficiary will be treated as the transferor of the trust corpus for GST tax purposes under § 2652(a)(1). The proposed modification will not result in a shift of any beneficial interest in any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed modification in further trust will not extend the time for vesting of any beneficial interest in any trust. Accordingly, based on the facts presented and the representations made, we rule that the proposed modification will not cause Trust A or the Trust A Successor Trusts to lose their exemption from the GST tax of chapter 13.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

Sincerely,

Lorraine E. Gardner

Lorraine E. Gardner

Senior Counsel, Branch 4

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures:

Copy for § 6110 purposes

Copy of this letter

cc: