

Internal Revenue Service

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Department of the Treasury

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Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4 - PLR-139671-01
Date: JULY 19, 2002

In re:

Legend:

Settlor =
A =
B =
Grandchild 1 =
Grandchild 2 =
Grandchild 3 =
Grandchild 4 =
Trust =
Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

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 Trust, an irrevocable trust, for the benefit of his grandchildren, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4. Article Three, Paragraph A. of the trust instrument provides that the trustee is to divide Trust into four equal shares, one for each grandchild. Under Article Three, Paragraph B., each share is to be administered as a separate trust. Trust 1 is for the benefit of Grandchild 1; Trust 2 is for the benefit of Grandchild 2; Trust 3 is for the benefit of Grandchild 3; and Trust 4 is for the benefit of Grandchild 4. A is currently serving as trustee of Trust 1, Trust 2, Trust 3, and Trust 4.

Article Three, Paragraph B.1. provides as follows:

The Trustee shall accumulate the income of each trust and may pay to the grandchild for whom the trust is set aside as much of the current or accumulated income and principal thereof as the Trustee shall determine in the Trustee's discretion to be necessary and appropriate for the grandchild's support, education, care and maintenance, taking into consideration, to the extent the Trustee considers advisable, any income or resources of the grandchild, outside the grandchild's trust, known to the Trustee and reasonably available for these purposes.

Article Three, Paragraph B.3. provides:

Upon the last to occur of (i) the attainment of age eighteen (18) by each grandchild of the Settlor or (ii) the death of both [A] and [B], each such trust shall terminate and the trust as then constituted, including both principal and accumulated and current income, shall be distributed, free of trust, to the grandchild for whom said trust is then being administered under this instrument. If any grandchild shall die before becoming entitled to distribution of his trust as specified in this Paragraph B, the undistributed balance of that grandchild's trust shall be distributed, free of trust, to the then living issue of such grandchild, by right of representation, or if there are no such then living issue, to such of the issue of [A] and [B] as are then living, by right of representation.

Article Six, Paragraph I of Trust provides that, any other provision of Trust notwithstanding, 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, A and the beneficiary of each trust propose to petition the

Court with jurisdiction over the trusts to obtain an order from the Court approving the following proposed modification of Article Three, Paragraph B.1. as follows:

The Trustee shall distribute all of the income (within the meaning of Section 643(b) of the Internal Revenue Code) of each Trust currently and may pay to the grandchild for whom the trust is set aside as much of the principal thereof as the Trustee shall determine in the Trustee's discretion to be necessary and appropriate for the grandchild's support, education, care and maintenance, taking into consideration, to the extent the Trustee considers advisable, any income or resources of the grandchild, outside the grandchild's trust, known to the Trustee and reasonably available for these purposes.

You represent that no additions, actual or constructive, have been made to any of the trusts 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 any trust for generation-skipping transfer tax purposes.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. 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, Trust 1, Trust 2, Trust 3, or Trust 4 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, the trusts 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:

cc: