

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-117742-99

Date:

September 25, 2000

Re:

Legend

Decedent	=
Trust A	=
Daughter	=
Cotrustee A	=
Cotrustee B	=
Cotrustee C	=
<u>A</u>	=
State	=

Dear :

This is in response to your July 20, 2000 letter and prior correspondence in which you requested several rulings regarding the generation-skipping transfer tax consequences of a proposed modification of Trust A.

Decedent died testate prior to September 26, 1985. His will was admitted to probate in State and is governed by State law. Under Decedent's will, a residuary trust, Trust A, was established for the primary benefit of Daughter, her husband, and her issue. Under the terms of Trust A, the trustees have the absolute discretion to distribute net income to or for the benefit of Daughter (or her husband, if Daughter dies) and her lawful issue, for reasonable support, care, or comfort, after the trustees have taken into consideration any such distributee's income from sources outside of this trust of which the trustees have actual knowledge. Trust A also provides:

If the payments from ... Trust "A" . . . to which any beneficiary at the time receiving benefits thereunder is entitled shall be insufficient in the discretion of the Trustees to provide for his or her reasonable support,

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care, comfort, and education, after taking into consideration, to the extent they deem advisable, such person's income from sources outside of such trust of which the trustees have actual knowledge, the Trustees may pay to such beneficiary or apply for his or her benefit so much of the principal of said trust estate as they may deem proper or necessary for that purpose.

On the death of the survivor of Daughter, or her husband, the corpus is to be distributed to Daughter's lawful issue, then living.

Under the terms of Trust A, there are two individual trustees, Cotrustee A and Cotrustee B, and one corporate trustee, Cotrustee C. Cotrustee A is given sole authority to distribute Trust A income, with the power passing to Cotrustee C if Cotrustee A ceases to be a trustee. In contrast, discretionary distributions of Trust A corpus must be consented to by a majority of the trustees. Presently, Cotrustee A is unable to perform his duties. Trust A does not provide a mechanism to replace Cotrustee A.

Cotrustee B and Cotrustee C propose to petition the appropriate state court to modify the trustee provisions to: (1) replace Cotrustee A with a Special Trustee; (2) provide that the new Special Trustee may appoint his or her successor; (3) provide that the new Special Trustee will have all duties of Cotrustee A, including sole discretion over the distribution of trust income; (4) provide that the Special Trustee will likewise have the sole discretionary power over distributions of corpus; (5) provide that the Special Trustee may exercise his or her sole discretion after taking into consideration, to the extent the Special Trustee deems advisable, a beneficiary's income from sources outside Trust A of which the Special Trustee has actual knowledge; and (6) provide that Cotrustee B, Cotrustee C, and the Special Trustee will continue to exercise all other fiduciary duties as before. Lastly, the petition will ask the court to appoint A as Special Trustee. A is not a beneficiary of Trust A.

It is represented that Trust A was irrevocable prior to September 25, 1985, and no additions have been made to the trust.

You have requested the following rulings:

1. The proposed modifications will not cause Trust A to lose its status as a trust that was created and was irrevocable prior to September 25, 1985.
2. The proposed modification will not be deemed to result in an addition or constructive addition to Trust A.
3. Provided no additions are made to Trust A as modified, future distributions from Trust A will be exempt from the generation-skipping transfer tax.

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4. The consent of the beneficiaries to the proposed modification of Trust A will not be a transfer for gift tax purposes and will not constitute a taxable gift under section 2501 of the Internal Revenue Code.
5. The proposed appointment of A as Special Trustee will not cause any portion of the corpus of Trust A to be includible in the gross estate of A.

#### Ruling Requests 1-3

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. Under § 26.2601-1(b)(1)(ii), unless otherwise provided in § 26.2601-1(b)(1)(ii)(B) or (C) (describing property includible in the gross estate under §§ 2038 and 2042) any trust in existence on September 25, 1985, is considered an irrevocable trust.

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) under § 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 exempt 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.

Section 16081(c) of the State Probate Code provides that unless a settlor or testator clearly indicated that a broader power is intended by express reference to this subdivision, a person who is a beneficiary of a trust that permits the person, as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself may exercise that power in his or her favor only for his or her health, education, support, or maintenance within the meaning of § 2041 and 2514 of the Internal Revenue Code.

You have represented that Trust A 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 modification will not alter the quality, value or timing of any powers, or

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beneficial interests, rights or expectancies originally provided for under the terms of Trust A. Therefore, the modifications, as proposed, will not cause Trust A to lose its status as a trust that was created and was irrevocable prior to September 25, 1985. Furthermore, we conclude that the proposed modifications will not be deemed to result in an addition or constructive addition to Trust A. Thus, provided no additions, either actual or constructive, are made to Trust A as modified, distributions from the trust will not be subject to GST tax.

#### Ruling Request 4

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible.

In this case, the interest of each beneficiary will remain the same after the proposed modification. Accordingly, based on the facts submitted and the representations made, the modification will not cause any beneficiary of Trust A to have made a taxable gift for Federal gift tax purposes under § 2501.

#### Ruling Request 5

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1)(A) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

We conclude that because A is not a beneficiary of Trust A, and therefore can not appoint any Trust A income or corpus for his or her own benefit, directly, or indirectly, the proposed appointment of A as Special Trustee will not cause any portion of the corpus of Trust A to be includible in the gross estate of A under § 2041.

Except as we have ruled under the cited provisions of the Code, we express no opinion about the tax consequences of the proposed transaction under those provisions or under any other provisions of the Code.

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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 taxpayers requesting it. Section 6110(k)(3) of the trust the Code provides that it may not be used or cited as precedent.

Sincerely yours,  
Associate Chief Counsel  
(Passthroughs and Special  
Industries)  
By \_\_\_\_\_  
George Masnik  
Chief, Branch 4

Enclosure  
Copy for 6110 purposes