

Internal Revenue Service

Department of the Treasury

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Date:

December 17, 1999

Legend:

Trust 1 =

Date 1 =

Date 2 =

Date 3 =

State 1 =

State 2 =

A =

B =

C =

D =

E =

F =

G =

Bank 1 =

Bank 2 =

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Dear Sir or Madam:

We received your letter, dated August 31, 1999, requesting a ruling that the proposed modification of Trust 1, a grandfathered trust, will not cause Trust 1 to be subject to the generation-skipping transfer (GST) tax imposed by § 2601 of the Internal Revenue Code. This letter responds to your request.

A established Trust 1 on Date 1. Paragraph 2 of the Trust 1 agreement provided for income from Trust 1 to be paid to B, A's father, for as long as he lived. Paragraph 3 of Trust 1 provided that on B's death, Trust 1 is to be administered in accordance with the terms in B's Will regarding B's residuary estate. B died on Date 3, leaving a Last Will and Testament dated Date 2 (the "Will").

Article SIXTH, paragraph D of the Will gives D an income interest for life in Trust 1. On D's death, the remainder of Trust 1 is to be paid to D's issue, per stirpes. If D is not survived by any issue, the remainder is to pass to E, A's other son, if E is living. If E is not living, the fund is to pass to E's issue, per stirpes. D is currently living and has living children and more remote issue. E is not living but has children and grandchildren who are living.

Article EIGHTH of the Will provided that there should always be at least three Trustees and provided for successor Trustees to be named. The current Trustees of Trust 1 are F, G, and Bank 1. Bank 1 is a State 1 corporation. Bank 1 has resigned as Trustee pending court approval. A new corporate Trustee, Bank 2, has been appointed pending court approval. Bank 2 is a State 2 corporation. A State 2 court has granted conditional approval of the resignation of Bank 1, the appointment of Bank 2, and the removal of Trust 1 from State 1 to State 2. The approval is conditioned on the Trustees' ability to obtain similar approval from a State 1 court, and a private letter ruling confirming Trust 1 will not lose its GST exemption due to a change in corporate trustees and a change in situs. An action seeking approval has been instituted in State 1.

You represent that no additions, actual or constructive, have been made to Trust 1 after September 25, 1985. You also represent that the law of State 1 will continue to govern the administration of Trust 1 and the validity, construction, and interpretation of the trust instrument. In addition, you represent that the only effect of the change in trust situs would be substantial savings in state income tax imposed at the trust level.

You have requested the following ruling: the proposed resignation of Bank 1 as Trustee in State 1 followed by the proposed appointment of Bank 2 as Trustee in State 2, and the resulting change in situs of Trust 1 from State 1 to State 2, will not affect the current grandfathered or exempt status of Trust 1, and neither distributions from Trust 1 nor termination of Trust 1 will be subject to the GST tax.

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Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term “generation-skipping transfer” to include a taxable distribution, taxable termination, and a direct skip.

Section 2612(a)(1) provides that the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) provides that the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Section 2612(c) provides that the term “direct skip” means a transfer subject to a tax imposed by Chapters 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term “skip person” as (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 if all interests in the trust are held by skip persons, or if there is no person holding an interest in such trust, and at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2613(b) provides that, for purposes of the GST tax, the term “non-skip person” means any person who is not a skip person.

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the generation-skipping transfer 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 26.2601-1(b)(1)(ii) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust.

An amendment to a trust, which was irrevocable on September 25, 1985, and thus, is exempt from the GST tax, will cause the trust to lose its exemption if the amendment modifies or otherwise changes the quality, value or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms

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of the trust. A trust's exemption from the GST tax is not affected, however, by amendments relating to the administration of the trust.

Based on the information submitted and the representations made, Trust 1 is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below the grantor's generation. Trust 1 was irrevocable on September 25, 1985 and there have been no additions, actual or constructive, since that date. Therefore, Trust 1 is exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i).

Based on the information submitted and the representations made, we conclude that the proposed appointment of Bank 2 in State 2 as Trustee of Trust 1 and the change in situs of Trust 1 from State 1 to State 2 will not modify or otherwise change the quality, value, or timing of any of the powers, beneficial interests, rights or expectancies originally provided under the terms of Trust 1, provided that Trust 1 continues to be governed by the laws of State 1. Thus, the proposed modification of Trust 1 under the Agreement will not affect the exempt status of Trust 1 for purposes of Chapter 13. Accordingly, neither distributions to skip persons nor terminations of interests of non-skip persons will be subject to the GST tax.

This ruling is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

Except as specifically ruled herein, we express or imply 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,

Christine E. Ellison

Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures

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