

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

December 21, 1998

Re:

Legend

Settlor	=
Spouse	=
Child A	=
Child B	=
Trust	=
Family Trust	=
Bank	=
Date 1	=
Date 2	=
State	=

Dear :

This is in response to your letter dated December 3, 1998, and prior correspondence, submitted on behalf of the trustees of the Trust and Family Trust requesting several rulings concerning the merger of those two trusts.

Settlor died on Date 1, prior to September 25, 1985. Spouse died on Date 2. On August 25, 1965, the Settlor established an irrevocable trust (Trust). Trust provides that on the death of Spouse, the trust will divide into two separate trusts (Trust A and Trust B). Under the terms of Trust A, one-half of the income is to be distributed to Child A and the other one-half of the income may be distributed, in the trustees' discretion, in such proportions as the trustees may determine, to Child A, or the grandchildren or other living issue of Settlor. Under the terms of Trust B, one-half of the income is to be distributed to Child B and the other one-half of the income may be distributed, in the trustees' discretion, in such proportions as the trustees may

determine, to Child B, or the grandchildren or other living issue of Settlor.

Trust further provides that if Child A or Child B predeceases Settlor's Spouse, the one-half share of trust income required to be distributed to the deceased child may be distributed, in the trustee's discretion, to the grandchildren or other living issue of Settlor. Child B predeceased Spouse in 1992.

Upon the death of the last to survive of Settlor, Spouse, Child A, and Child B, the trust estate is to be divided into a number of shares with one share for each surviving grandchild and one share for each deceased grandchild with surviving issue. If a grandchild has attained age 30, the share is to be distributed outright, otherwise the share is to be held in trust.

In any event all trusts created under the instrument must terminate no later than 21 years after the last to die of all beneficiaries living at the date of death of Settlor.

Trust further provides that if the income to which any child or grandchild is entitled is insufficient, in the trustee's discretion, to provide for the health, education, support and maintenance of such child or grandchild, then the trustee may distribute corpus for those purposes; provided, however, that after the trust estate is divided into separate shares for each grandchild, payment of principal is limited to that share.

Pursuant to Settlor's will, a testamentary trust (Family Trust) was established. The dispositive provisions of the Family Trust are the same as those for Trust.

Child A, Bank, and an independent third party currently serve as cotrustees of Trust and Family Trust. At the present time, the trustees of Trust and Family Trust have not divided the trusts into two separate trusts. The trustees propose to petition the appropriate state court to authorize the retention of Trust and Family Trust in undivided form and then to merge the trusts into a "Merged Trust." The Merged Trust will provide that 1/4 of the income is to be distributed to Child A; 1/4 of the income may be distributed, in the trustees' discretion, in such proportions as the trustees may determine to Child A, or the grandchildren or other living issue of Settlor; and 1/2 of the income may be distributed, in the trustees' discretion, in such proportions as the trustees may determine to the grandchildren or other living issue of Settlor. Except as discussed below, the Merged Trust will otherwise have the same terms as Trust and

Family Trust including the provision for distribution on the death of the last to survive of Settlor, Spouse, Child A, and Child B.

The trustees propose to ask the court to modify the successor trustee provisions. In 1996, Bank acquired the previous corporate trustee of Trust and Family Trust. As a result, under state law, the trust beneficiaries had a cause for removal of Bank. After Bank acquired the previous trustee, Bank and Child A had an informal agreement that Bank would resign as trustee if Child A and a majority of the then-adult beneficiaries (including Child A) requested the resignation. The proposed modification provides that Bank or any successor corporate trustee is to resign within 30 days of receiving a written request by Child A (that is approved by a majority of the then-adult beneficiaries including Child A)). If Child A is incompetent, then a majority of the then-adult beneficiaries may request the resignation of Bank, or any successor corporate trustee. Upon resignation of the corporate trustee, the successor to such corporate trustee shall be a bank or trust company designated by Child A and approved by a majority of the then-adult beneficiaries (including Child A). Any such corporate trustee cannot be related or subordinate (within the meaning of § 672(c)) to Child A or any adult beneficiary.

Under applicable State law, a trustee who is also a beneficiary of the trust can only make discretionary distributions to herself or himself for health, support, education, and maintenance within the meaning of §§ 2041 and 2514 of the Internal Revenue Code.

It is represented that no additions have been made to the trusts after September 25, 1985.

The following rulings have been requested:

1. The retention of Trust and Family Trust as single, undivided trusts and the subsequent merger into Merged Trust will not constitute an addition to Trust, Family Trust, or Merged Trust, and will not cause any one of these trusts to lose its exempt status for purposes of the generation-skipping transfer tax.
2. The proposed modification of the successor trustee provisions in Merged Trust will not constitute an addition to Merged Trust, and will not cause Merged Trust to lose its exempt status for purposes of the generation-skipping transfer tax.

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

Section 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 provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust

that was irrevocable on September 25, 1985, but only to the extent that such transfer is 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)(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 by § 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.

In general, any modification of an irrevocable trust that results in a change in the quality, value, or timing of any interest in the trust will cause the trust to lose exempt status.

It has been represented that no additions have been made to Trust or Family Trust after September 25, 1985. In the present situation, after the merger there will be no change in the dispositive provisions with respect to the property previously held in the Trust and in the Family Trust. The trustees will hold the same property after the merger, and the interests of all beneficiaries will be unchanged. Thus, the proposed merger of Trust and Family Trust into Merged Trust as described will not effect the quality, value, or timing of any beneficial interest under the original trusts. Accordingly, we conclude that proposed transaction will not constitute an addition to Trust, Family Trust, or Merged Trust, and will not cause any one of the trusts to lose otherwise exempt status for purposes of the generation-skipping transfer tax.

In addition, we conclude that proposed modification of the successor trustee provisions in Merged Trust will not cause Merged Trust to lose otherwise exempt status for purposes of the generation-skipping transfer tax.

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.

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.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George L. Masnik
Chief Branch 4

Enclosure
Copy for 6110 purposes