

Internal Revenue Service

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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:

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PLR-146583-04

Date: AUGUST 18, 2005

Date of Death:

Legend

Decedent =

Wife =

Daughter =

Granddaughter =

Grandson =

R =

T =

U =

V =

Court =

County =

State =

State Statute =

Institute =

\$x =

\$y =

Date 1 =

Date 2 =

Date 3 =

Trust =

Bank =

Dear :

This is in response to your authorized representative's submission dated July 30, 2004, in which a ruling was requested on the Generation-Skipping Transfer (GST) Tax consequences of a proposed modification of Trust.

According to the facts submitted, Decedent died testate on Date 2, survived by Wife. Article Fourth of Decedent's will provides that all the rest, residue and remainder of Decedent's estate, real, personal and mixed, in possession or in expectancy is bequeathed to Bank, its successors, Wife, T, and U to be held in a separate trust (Trust) for the benefit of Wife, Daughter, and Daughter's descendants. It is represented that Trust was irrevocable on September 25, 1985 and that there have been no additions to Trust since September 25, 1985. Trust currently holds assets valued at approximately \$x.

Paragraph (a) of Trust provides that if Wife survives Decedent, the Trustees are to pay to Wife, in convenient installments, during her lifetime, the income from Trust and from other sources up to an amount equal to \$y, plus medical, hospital, and surgical expenses. Under Paragraph (b), after the death of Wife, the Trustees are to pay the income from Trust in equal shares per capita to Daughter and her children, P and Q, in convenient installments during the life of Daughter.

Paragraph (c) provides that upon the death of the survivor of Decedent, Wife, and Daughter, the income from Trust is to be paid per stirpes to the descendants of Daughter who may be living, in convenient installments, until the distribution of Trust as provided.

Upon the twenty-first (21) anniversary date of the death of the survivor of Decedent, Wife, and Daughter, Trust as then constituted is to be distributed per stirpes to the then living descendants of Daughter. If at such time any descendant is under the age of twenty-one (21) years, his or her share of Trust is to immediately vest in the descendant but possession thereof is to be postponed and only so much of the net income and principal thereof is to be paid to the descendant as the trustees may deem necessary to provide for the care, support, and education of the descendant until the descendant attains the age of twenty-one (21) years, and any income not so expended during the calendar years is to be added to the principal each year.

Under Paragraph (d), if upon the death of the survivor of Decedent, Wife, and Daughter, there is no then living descendant of Daughter, then upon the death of such survivor, the trust estate is to be paid and distributed outright to Institute to be used for educational purposes in such manner as the governing body of Institute shall deem most beneficial to the institution.

Paragraph (e) provides that if, from time to time, in the opinion of the trustees, (other than an Individual Trustee who is the income beneficiary affected) the income payable to any beneficiary of Trust, together with such other income available to such beneficiary known to the trustees, is insufficient to meet unusual expenses caused by illness, accident, or other unexpected misfortune, or to provide for the education, maintenance, welfare and support of such beneficiary, the trustees may pay to such beneficiary such sums as the trustees (other than an Individual Trustee who is the income beneficiary affected) deem necessary or desirable for such purposes, from the principal of Trust.

It is represented that the current trustees of Trust are Bank, Daughter, and Granddaughter. The individual successor trustees named in Trust and in Article Six of Decedent's will who are not members of Decedent's family, that is, T, U, and V, have either resigned or declined to act as trustee. On Date 3, Court entered its decree adding additional successor trustee provisions to Trust. The decree added Granddaughter as a current trustee and provided that if either Daughter or Granddaughter ceases to act as a trustee, then Grandson will act as successor trustee.

Presently, there are no other provisions in Trust or the decree for successor individual trustees and no provisions for the appointment of successor individual trustees if more than one of Daughter, Granddaughter, and Grandson do not act as trustees. Since Trust will continue for 21 years after Daughter's death, and the Trust has long been administered with at least two family members as trustees, the trustees and beneficiaries propose to modify Trust by entering into Agreement under State Statute to add additional successor trustee provisions to Trust. Under State Statute, if all of the primary beneficiaries of a trust are adult and competent, then the trustees and the primary beneficiaries of the trust can enter into a written agreement regarding the provisions of the trust and that agreement is binding on all of the beneficiaries of the trust in the same manner as if a court had entered an order approving the agreement. "Primary beneficiaries" are defined under State Statute as the beneficiaries 1) who are currently entitled to receive income and principal from the trust, and 2) who would receive the trust principal upon the termination of the trust if the beneficiary survives to the termination date and assuming there is no exercise of powers of appointment.

The proposed Agreement provides, the successor trustee provisions of the Trust as set forth in Article Six of the Trust and as amended by the Decree are further amended to provide as follows: If Granddaughter ceases to act as a trustee of the Trust and if Grandson for any reason does not act or continue to act as successor trustee to Granddaughter, then Granddaughter's daughter, R shall act as successor trustee to Granddaughter (provided that she is not already acting as a trustee of the Trust). In addition, if Daughter ceases to act as a trustee of the Trust and if Grandson for any reason does not act or continue to act as successor trustee to Daughter, then R shall act as successor trustee to Daughter (provided that she is not already acting as a trustee of the Trust).

The following rulings are requested.

1) The proposed modification of Trust that adds an additional successor trustee of Trust, pursuant to a procedure authorized by State law, is administrative in nature within the meaning of § 26.2601-1(b)(4)(i)(D)(2) of the Generation-Skipping Transfer Tax Regulations and does not result in a shift in beneficial interest to a lower generation beneficiary or constitute an addition to Trust.

2) Trust will retain its status as exempt from GST tax after the proposed modification.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer, which is defined under section 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under section 1433(a) of the Tax Reform Act of 1986 (Act) and section 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under section 1433(b)(2)(A) of the Act and section 26.2601-1(b)(1)(i), the tax does not apply to a 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)(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 section 26.2601-1(b) 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 GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in section 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 generation-skipping transfer or the creation of a new generation-skipping transfer. A modification that is administrative in nature that only indirectly increases the amount transferred will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 10, considers a situation where a trust is modified by decreasing the number of trustees. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation than the person or persons who held the

beneficial interest prior to the modification. In addition, 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. Therefore, the modification will not subject the trust to the provisions of chapter 13.

Ruling 1. The proposed modification of Trust regarding the addition of another successor trustee in the event that Granddaughter or Grandson fails or ceases to act as trustee, is a modification that is administrative in nature. This modification does not shift any beneficial interest in Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed modification will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in Trust or constitute as addition to Trust.

Ruling 2. Based on the facts submitted and representations made, we conclude that after the proposed modification of Trust, resulting in the addition of an additional successor trustee, under an agreement entered into pursuant to State Statute, Trust will continue to retain its exempt status for GST tax purposes.

Lastly, we note that the previous modification of Trust on Date 3, a date that is prior to September 25, 1985, that added additional trustees to Trust does not affect the GST exempt status of Trust.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied 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(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Lorraine E. Gardner
Senior Counsel
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of letter for section 6110 purposes