

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7-PLR-114040-99

Date:

July 21, 2000

LEGEND:

Testamentary Trust =

Decedent =

a =

b =

c =

Son 1 =

Son 2 =

Daughter =

d =

e =

f =

State =

g =

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Company =

Spouse =

h =

Bank =

Foundation =

Trust A =

Trust B =

Trust C =

i =

Grandson =

Granddaughter =

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j =

Court =

k =

l =

Dear Sir or Madam:

In a letter, dated _____, you requested a ruling concerning the generation-skipping transfer (GST) tax consequences of the partition and the modification and clarification of the administrative provisions of the Testamentary Trust, a grandfathered trust. This letter responds to your request.

The information submitted and the representations made are summarized as follows: Decedent executed a will on a and a codicil to the will on b. Decedent died in c, survived by Son 1, Son 2, and Daughter. Decedent's will established the Testamentary Trust for the benefit of Decedent's descendants.

The relevant provisions of the Testamentary Trust are summarized as follows:

Distribution of Income:

The trustees are to pay the net income from the Testamentary Trust quarterly, or more often in their discretion, to Decedent's lineal descendants who are living at the time of the distributions in equal shares *per stirpes*; provided, however, that in so far as the same is not contrary to law the trustees are to accumulate the income that otherwise would be payable to any person under the age of d years and thereupon add the income to the corpus or principal of the Testamentary Trust.

Multiply Trusts:

In order to facilitate their accounting, record keeping, and segregation of assets, the trustees on receiving the Testamentary Trust property from Decedent's executors, are to create as many trusts as there are at that time children of Decedent living and deceased children of Decedent who are then survived by descendants. Wherever in Decedent's will Decedent provides for the designation of successor trustees by a majority of the income beneficiaries who are adults with respect to the trust, it is Decedent's will that such action be effective only if taken by a majority of the adults then entitled to receive income from the several trusts under Decedent's will (or if only

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one such adult, then that one), and that the designation is to apply to each trust, to the end that at all times the same trustees are to act for each of the trusts.

Termination of Trust:

The Testamentary Trust is to terminate on the first to happen of the following two events: (1) e years after the death of the survivor among all of Decedent's lineal descendants who are living at the time of Decedent's death, and (2) the death of the survivor among all of Decedent's lineal descendants regardless of when the lineal descendants were born.

Distribution on Termination:

On the final termination of the Testamentary Trust, the principal is to be paid to Decedent's then living lineal descendants in equal share *per stirpes*; or if at the time of the termination of the Testamentary Trust Decedent has no lineal descendants then living, the trustees are to pay, turn over, and deliver all of the Testamentary Trust property in their hands as follows: f thereof to Decedent's heirs at law according to the statutes of descent and distribution of State as though Decedent had died on the date of the termination of the Testamentary Trust, and the remaining g thereof to Bank in trust for Foundation.

Successor Corporate Trustee:

In the event of the merger, consolidation, or sale of substantially all of its assets by Company to or with another bank or trust company authorized to carry on a trust business, the merged, consolidated, or purchasing company thereupon is to become the corporate trustee.

Spouse or, if Spouse is then deceased or has renounced his right to name a successor corporate trustee, a majority of the adults then entitled to receive income from the Testamentary Trust (or if only one, then that one) may at any time or times by instrument in writing delivered to the then corporate trustee, name a successor corporate trustee and may change any designation of a successor corporate trustee previously made (prior to the time when the corporate trustee has become corporate trustee of the Testamentary Trust); provided that the successor corporate trustee is a bank or trust company that is authorized to carry on a trust business in one or more states of the United States and has a capital surplus and undivided profits of not less than h. In the event that the then corporate trustee resigns, is removed, or fails or ceases to serve for any reason, the successor corporate trustee named in the manner provided in this paragraph is to succeed to all the powers and duties of the original corporate trustee.

Successor Individual Trustee:

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Spouse or, if Spouse is then deceased or has renounced his right to name a successor individual trustee, a majority of the adults then entitled to receive income from the Testamentary Trust (or if only one, then that one) may at any time or times by instrument in writing delivered to the then individual trustee, name a successor individual trustee and may change any designation of a successor individual trustee previously made (prior to the time when the individual trustee has become individual trustee of the Testamentary Trust). In the event that the then individual trustee resigns, is removed, or fails or ceases to serve for any reason, the successor individual trustee named in the manner provided in this paragraph is to succeed to all the powers and duties of the original individual trustee. If no successor individual trustee is named pursuant to the provisions of this paragraph, the corporate trustee is to serve as the sole trustee with all the powers and duties provided for the trustee until such time as an individual trustee is named pursuant to this paragraph to serve with the corporate trustee.

Since the initial funding of the Testamentary Trust, it has been administered as three separate trusts: (1) Trust A for the benefit of Son 1 and his descendants; (2) Trust B for the benefit of Son 2 and his descendants, and (3) Trust C for the benefit of Daughter and her descendants (collectively the Trusts). Each Trust has its own taxpayer identification number and files its own fiduciary income tax return.

Son 1 died in j and his children, Grandson and Granddaughter, currently receive the income from Trust A by representation. Each of Grandson and Granddaughter has reached the age of d, therefore, no Trust A income is currently being accumulated.

Over the years the relationships among the income beneficiaries of the Trusts have deteriorated. Until j, the Trusts were administered by the same corporate trustee. The income beneficiaries of the Trusts requested the resignation of the corporate trustee, but could not come to a majority agreement concerning the naming of a successor corporate trustee. Because, Decedent's will does not authorize the income beneficiaries to name a different corporate trustee for each separate Trust, the trustees petitioned the Court to give each income beneficiary the power to name a separate successor corporate trustee for his or her separate Trust. In addition, the trustees petitioned the Court to divide Trust A between the income beneficiaries, Grandson and Granddaughter. The petition also requested the clarification of the terms by which the successor trustees would distribute the Trusts' assets on their termination.

On k, the Court issued an order (Court Order) dividing Trust A between Grandson and Granddaughter and allowing the income beneficiary of each Trust to appoint a separate successor trustee for his or her respective Trust. In addition, the Court ordered that until its termination, the Testamentary Trust is to consist of four separate Trusts: (1) Trust B for the benefit of Son 2 and his descendants; (2) Trust C for the benefit of Daughter and her descendants; (3) Trust D for the benefit of Grandson and his descendants; and (4) Trust E for the benefit of Granddaughter and

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her descendants. Until these Trusts terminate, each successor trustee is to administer a Trust by making current income distributions only to the income beneficiary or his or her respective living lineal descendants, *per stirpes*.

It is represented that following the Court Order, it became apparent that the terms for distribution prior to the Trust's termination also needed clarification. All interested parties entered into Consent and Stipulation as to Terms Governing the Distribution of Trust Assets (Consent and Stipulation). The Court approved the Consent and Stipulation on 1.

Paragraph 1 of the Consent and Stipulation provides that each of Trust B and Trust C (collectively, the Separate Trusts), and Trust D, and Trust E (collectively, the Sub-Trusts) will terminate at the same time on the first to occur of the following events: (a) e years after the death of the survivor between Son 2 and Daughter, or (b) the death of the survivor among all of Decedent's lineal descendants.

Paragraph 2 of the Consent and Stipulation provides that on the final termination, the assets of each of each Separate Trust and each Sub-Trust are to remain separated along the family lines of Decedent's children, except as otherwise specifically provided in the Consent and Stipulation.

Paragraph 3 of the Consent and Stipulation provides that on final termination, the balance of the assets in each Separate Trust is to be distributed *per stirpes* to the then-living descendants of the child of Decedent for whose benefit the Separate Trust was created.

Under Paragraph 4 of the Consent and Stipulation, on final termination, the balance of the assets in each Sub-Trust is to be distributed to the income beneficiary of the Sub-Trust. In the event that the income beneficiary is not then living, the balance of the assets is to be distributed to the deceased income beneficiary's then-living descendants *per stirpes*, or if none, the assets are to be distributed *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living descendants. In the event a Sub-Trust has more than one income beneficiary, the balance of the assets in the Sub-Trust is to be distributed *per stirpes* to the then-living lineal descendants of the beneficiary for whose benefit the Sub-Trust was created.

Paragraph 5 of the Consent and Stipulation provides that on the final termination, in the event that a child of Decedent has no living lineal descendants, the balance of the assets in that child's Separate trust, or a Sub-trust created therefrom, as the case may be, is to be distributed to the then-living descendants of Decedent *per stirpes*.

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Paragraph 6 of the Consent and Stipulation provides that in the event that no lineal descendants of Decedent are living on the final termination, all Trust assets are to be distributed pursuant to the “Distribution on Termination” section of the Testamentary Trust.

Paragraph 8 of the Consent and Stipulation provides that prior to the final termination, the trustee is to pay the income from a Separate Trust semiannually (or more often in its discretion) to the child of Decedent for whom the Separate Trust was created.

Paragraph 9 of the Consent and Stipulation provides that after the death of a child of Decedent, the trustee is to pay the income from the Separate Trust semiannually (or more often in its discretion) to the lineal descendants of the child who are living at the time of the respective distributions, *per stirpes*, subject to the “Accumulation of Income” section of the Testamentary Trust. Notwithstanding the foregoing, if

- (a) one or more of the descendants of a deceased child request the trustee to divide the Separate Trust into sub-trusts for the descendants,
- (b) the trustee in its discretion considers it advisable to make such a division, and
- (c) the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its “grandfathered” exemption from the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the Separate Trust *per stirpes* among the then-living descendants of the deceased child. Each share created for a descendant is to be held and administered as a sub-trust for the benefit of that descendant.

Paragraph 10 of the Consent and Stipulation provides that in the event that, prior to final termination, any Separate Trust ceases to have a current income beneficiary (e.g., a Separate Trust’s sole beneficiary dies without then-living lineal descendants) the balance of such Trust’s assets is to be divided *per stirpes* among the then-living lineal descendants of Decedent and the share of such descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 11 of the Consent and Stipulation provides that the trustee is to pay the income from a Sub-Trust semiannually (or more often in its discretion) to the descendant of Decedent for whom the Sub-Trust was created.

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Paragraph 12 provides that after the death of the descendant, the trustee is to pay the income from a Sub-Trust semiannually (or more often in its discretion) to the lineal descendants of the deceased descendant who are living at the time of the respective distributions, *per stirpes*, subject to the "Accumulation of Income" section of the Testamentary Trust. Notwithstanding the foregoing, if

- (d) one or more of the descendants of a deceased descendant request the trustee to divide the Sub-Trust into further sub-trusts for the descendants,
- (e) the trustee in its discretion considers it advisable to make such a division, and
- (f) the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its "grandfathered" exemption from the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the Sub-Trust *per stirpes* among the then-living descendants of the deceased descendant. Each share created for a descendant is to be held and administered as a sub-trust for the benefit of such then-living descendant.

Paragraph 13 of the Consent and Stipulation provides that in the event that, prior to final termination, a Sub-Trust ceases to have a current income beneficiary (*e.g.*, a Sub-Trust's sole income beneficiary dies without then-living lineal descendants) the balance of the assets of the Sub-Trust is to be divided *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living descendants, or if none, *per stirpes* among the then-living lineal descendants of Decedent. Each share created for a then-living descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 14 of the Consent and Stipulation provides that each Separate Trust and each Sub-Trust need not have the same trustee.

It is represented that the Testamentary Trust was irrevocable on September 25, 1985, and there have been no additions (actual or constructive) to it since that date.

You have requested the following rulings:

1. The proposed partition of Trust A will into two Sub-Trusts for the benefit of Grandson and Granddaughter will not cause the resulting Sub-Trusts to be subject to the GST tax.

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2. The modification and clarification of the administrative provisions of the Testamentary Trust will not cause Trust A, Trust B, or Trust C to be subject to the GST tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the 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.

Section 2611(a) defines the term "generation-skipping transfer" to mean: (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate or gift tax.

Section 2612(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person" to mean --

(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 --

(A) if all interests in such trust are held by skip persons, or

(B) if --

(i) there is no person holding an interest in the trust, and

(ii) at no time after the transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

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The Testamentary Trust is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Decedent's generation. The Testamentary Trust, however, has been exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i) because it was irrevocable on September 25, 1985, and there have been no additions (actual or constructive) to it since that date. You have requested a ruling that the partition of Trust A into Sub-Trusts for the benefit of Grandson and Granddaughter and the proposed modification of the provision relating to the appointment of successor individual trustees of the Testamentary Trust will not cause Trust A, Trust B, or Trust C to be subject to the GST tax.

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

Based on the information submitted and the representations made, the interests of the income beneficiaries under the division of Trust A, will remain the same and the timing of the termination of the Sub-Trusts will remain the same. Consequently, the value of the income or corpus interest of each income beneficiary will not change materially as a result of the division of Trust A into two separately administered Sub-Trusts. Therefore, the division of Trust A into two Sub-Trusts will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the Testamentary Trust. Accordingly, we conclude that the division of Trust A into two Sub-Trusts will not cause distributions from the Sub-Trusts to be subject to GST tax imposed by chapter 13, provided that no additions are made to the Sub-Trusts after September 25, 1985.

In addition, we conclude that the modification and clarification of the Separate Trust and the Sub-Trusts relates to the administration of those Trusts and 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 the Trust. Accordingly, neither distributions from the Separate Trusts or the Sub-Trusts to skip persons nor terminations of interests of non-skip persons in the Separate Trusts or Sub-Trusts will be subject to the GST tax.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions or any other provision 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.

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In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Joseph H. Makurath

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