

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-114865-02

Date:

JULY 15, 2002

In Re:

LEGEND:

Decedent =
Trust =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Trustee =
Local Court =

Dear :

This letter is in reply to your letter of March 7, 2002, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of a proposed division of a trust.

FACTS:

Decedent created Trust, an irrevocable trust, on Date 1. Date 1 is prior to September 25, 1985.

Paragraph V of the Trust instrument provides that:

(a) During the term and period of the natural life of Donor, said Trustee shall pay to her all of the net income from said trust, at least semi-annually, at the same time furnishing her a statement of the transactions and condition of said trust as of the completed period.

(B) Upon the death of Donor, the corpus of said trust fund, with

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accruals, shall be divided into three funds, one consisting of 10% thereof shall be denominated Fund A, another consisting of 50% thereof, Fund B, and the third consisting of 40% thereof, Fund C, and the income therefrom shall be paid to the persons hereinafter named, for the term and period given and in the proportions mentioned in the following paragraphs.

Paragraph VI provides:

Donor has classified the named beneficiaries under this trust in the manner which follows, indicating the class taking a particular fund by the corresponding letter. Class A consists of Donor's brother and sisters. Class B consists of Donor's nephews and nieces. Class C consists of Donor's grand nephews and grand nieces of her late husband.

Paragraph VIII provides:

For and during the term and period of the respective natural lives of the members of Class A and the survivor of them, my Trustee shall pay unto them in equal shares the net income from Fund A, viz. 10% of the net income arising from this trust. In the event of the death of any member of said class during the continuance of this trust, without leaving any child of children or other lineal descendants, the share of such deceased member shall be paid in equal shares to the surviving members of said class, the lineal descendants of any other deceased member of said class to take by representation, in equal shares if there be more than one, the share of such deceased member of that class. In event of the death of any member of said class, leaving any child or children, lawful issue, or other lineal descendants then living, such child or children or lineal descendants shall take the ancestor's share, in equal shares if there be more than one, and such payments of income continue during the term and period of this trust if such beneficiaries shall so long live, the issue of any deceased beneficiary thus taking the parent's share, always per stirpes and not per capita.

Paragraph IX provides:

In like manner after the death of Donor, and for and during the natural life of the members of Class B, my Trustee shall pay the net income from Fund B, viz. 50% of the net income from said trust, in equal shares to the said members of Class B. Upon the death of any member of Class B, leaving no child or children, lawful issue of his or her body then living, the share of such deceased member shall go to and be paid, in equal shares, to the surviving members of Class B and the lineal

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descendants of deceased members of Class B, the latter taking the parent's share per stirpes and not per capita. In the event of the death of any member of Class B, leaving such child or children, lawful issue, or lineal descendants, then living, the share of such deceased member of Class B shall go to and be paid to such child, children, or lineal descendants, in equal shares if there be more than one and taking per stirpes and not per capita.

Paragraph X provides:

The members of Class B are children of certain members of Class A and are the principal beneficiaries under this trust. This trust shall continue for and during the term and period of the life time of the members of Class A and Class B, and the survivor of them, and twenty-one years thereafter. As and when the death of any one of the members of said class occurs, the appropriation of the income to said member shall automatically fall to the lineal descendants of such deceased member, following the line of descent from generation to generation and taking always per stirpes until this trust be determined. If at any time during the term hereof, the line of descent from any member of Class A shall become totally extinct so that there be no lineal descendant of such member of Class A then living, then the income above appropriated to such member and the children or the lineal descendants of such member shall go and be paid, in equal shares, and per stirpes, to the surviving lineal descendants of the other members of Class A, in equal shares if there be more than one. At the termination of this trust the corpus of Funds A and B hereof, with all accumulations, shall vest in and be paid to the lineal descendants of the members of Class A then living, such descendants of each member of Class A to take as a class one equal share thereof and in equal shares amongst themselves if there be more than one.

Paragraph XI provides:

In like manner, after the death of Donor, and for and during the natural lives of the members of Class C, my Trustee shall pay the net income from Fund C, viz. 40% of the net income from said trust, in equal shares, to the said members of Class C. Upon the death of any member of Class C, leaving no child or children, lawful issue of his or her body, then living, or any issue of a deceased child or children, the share of such deceased member shall go to and be paid, in equal shares, to the surviving members of Class C and the lineal descendants of any deceased member of Class C, the latter taking the parent's share per stirpes and not per capita. In event of the death of any member of Class

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C, leaving such child or children, lawful issue, or lineal descendants, then living, the share of such deceased member of Class C shall go to and be paid to such child, children, or lineal descendants, in equal shares if there be more than one, and taking per stirpes and not per capita, and so on from generation to generation until the termination of this trust.

As and when the death of any one of the members of said class occurs, the appropriation of income to said member shall automatically fall to the lineal descendants of such deceased member, following the line of descent from generation to generation and taking always per stirpes until this trust be terminated. If at any time during the term hereof, the line of descent from any member of Class C shall become totally extinct so that there be no lineal descent of such member then living, then the income above appropriated to such member shall go and be paid, in equal shares and per stirpes, to the surviving lineal descendants of the other members of Class C, in equal shares if there be more than one.

At the termination of this trust the corpus of Fund C, with accumulations, shall vest in and be paid to the lineal descendants of the members of Class C, then living, such descendants of any member of Class C to take as a class one equal share thereof and in equal shares amongst themselves if there be more than one.

Paragraph XII provides:

If, during the continuance of this trust, all of the members of Class C shall have died, leaving no lawful issue or other lineal descendants then living and thus the line of descent from the members of Class C shall have become totally extinct, then the said trust fund C shall go to and become a part of trust fund B and the income thereof be paid and the corpus thereof vest and be distributed in accordance with the terms and provisions relative to said fund B as above set forth.

Paragraph XV provides:

This trust shall end and determine in any event at the end of the term and period of twenty-one years after the death of all of the members of Class B above named, and the survivor of them. Upon such termination of the trust, the Trustee shall pay and turn over to the parties thereunto entitled the balance of the trust fund in its hands, with accruals, after deducting its compensation and all proper charges and expenses and liabilities in relation thereto and may, at its discretion, turn the same over in whole or in part, in kind.

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The Trust instrument was supplemented on Date 2. The Supplement amended Paragraph V, section (a) to provide:

(a) Until September 30th, _____, the Trustee shall pay to Donor, if she shall so long live, so much of the net income from said trust as she may from time to time require, any of said net income then remaining to become a part of the corpus of said trust, and, beginning with October 1st, _____, all of the net income then remaining and to accrue during the lifetime of Donor shall in like manner be and become a part of the corpus of said trust and subject to all the terms and provisions of this Indenture.

On Date 3, Trust was modified by Local Court Decree. The Decree provides that:

Funds A and B under the Indenture of Trust created [Date 1] and supplement dated [Date 2] established by [Donor], deceased-settlor, are hereby separated from Fund C and Funds A and B shall henceforth be held as a separate trust (Trust A/B).

The current beneficiaries of Trust A/B represent six family lines. These beneficiaries seek to divide Trust A/B into six separate trusts, representing the six family lines, to accommodate their different investment and financial needs. The assets of Trust A/B will be divided on a pro rata basis into six separate equal trusts. Income shall continue to be paid according to the terms of Trust instrument and Supplement, as reformed by the Decree. Upon the death of a named beneficiary, his or her share is distributable to his or her descendants, per stirpes. All other terms and conditions of the Trust instrument and the Supplement, as reformed by the Decree, shall remain in full force and effect. The trustee petitioned Local Court to approve the division of Trust A/B into six separate trusts. On Date 4, Local Court issued an order approving the division pending a favorable ruling from the Internal Revenue Service on this ruling request. There have been no additions (actual or constructive) to Trust or Trust A/B since September 25, 1985.

The trustee has requested a ruling that the proposed division of Trust A/B into six separate trusts will not cause Trust A/B and the six separate trusts to lose their exempt status for GST tax purposes.

LAW AND ANALYSIS:

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping (GST) transfer, which is defined under section 2611 as a taxable distribution, a taxable termination, or a direct skip. Under section 1433(a) of the Tax Reform Act of 1986 (the Act), 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

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section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax does not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985. Section 26.2601-1(b)(1)(ii)(A) provides that, except as provided in section 26.2601-1(b)(1)(ii)(B) or (C), any trust (as defined in 2652(b)) in existence on September 25, 1985, is considered an irrevocable trust. However, this exemption does not apply to additions (actual or constructive) that are made to the trust after September 25, 1985.

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 will not cause the trust to lose its exempt status. Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, 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 GST transfer or the creation of a new GST transfer.

In this case, Trust was irrevocable on September 25, 1985, and no additions, actual or constructive, have been made to Trust since that date. Trustee proposes to divide Trust A/B into six equal and separate trusts. Each of the six separate trusts will benefit one of the family lines of the current beneficiaries. Otherwise, each of the six separate trusts will have provisions identical to those of Trust. The proposed division of Trust A/B will not shift a beneficial interest in the six separate trusts to any beneficiary who occupies a lower generation than the persons who held the beneficial interest prior to the division. The proposed division will not extend the time for vesting of any beneficial interest in the six separate trusts beyond the time provided for in Trust. Accordingly, based on the facts submitted and the representations made, and provided there are no further additions to the six separate trusts, we conclude that the division of Trust A/B into six separate trusts will not cause Trust A/B or the six separate trusts to lose their exempt status for GST tax purposes.

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. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any tax return to which it is relevant. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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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.

Sincerely,

Lorraine E. Gardner
Assistant to the Branch Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes

cc: