

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:7 / PLR-107935-00

Date:

October 11, 2000

Legend

Trust:

Trust 1:

Trust 2:

Decedent:

A:

B:

C:

D:

E:

F:

G:

H:

J:

K:

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L:

M:

Bank/Trustee:

Locality:

State:

State Court:

Petition:

Order:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

a:

b:

c:

d:

e:

Dear :

This is in response to a letter dated March 29, 2000, submitted by Trustee of Trust requesting a ruling that the proposed pro rata partition of Trust into two new trusts, Trust 1 and Trust 2, and the proposed modification in the terms of Trust 1 will not cause the trusts to be subject to the Generation-Skipping Transfer (GST) tax imposed by § 2601 of the Internal Revenue Code.

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Decedent died testate on Date 1, survived by Decedent's spouse, A, and Decedent's children, B, C, and D. Under Item II of Decedent's will, Trust was created for the benefit of A and Decedent's issue. A died on Date 2.

Item II of Decedent's will provides in part that after A's death, the income from Trust is to be distributed equally among Decedent's children, or their issue, for and during their lives, the issue of any dying to take or receive the parent's distributable share, and upon the expiration of twenty one years after the death of A, all Decedent's children, and all Decedent's grandchildren who may be living at Decedent's death, the corpus of Trust is to be divided equally among the descendants of Decedent's children, per stirpes. There is no provision for invasion of corpus during the term of Trust.

Item II of Decedent's will further provides in part that upon Decedent's death, Trustee is authorized and directed to take possession of, manage and control the property in Trust, and at any time within Trustee's discretion to sell and convey the same, or any part thereof, and to receipt of the purchase price. Trustee is charged with the duty of so managing, investing, and reinvesting the property in Trust as to yield therefrom the largest income consistent with its due preservation and security. Trustee has full and ample power to invest from time to time the estate which may come to Trustee's hands under Decedent's will in such manner and in such property as may appear to Trustee for the best interest of Trust, together with the full power and authority, from time to time, to change such investment or any or either of them and to make other investments or reinvestments at Trustee's discretion.

Item III of Decedent's will provides in part that upon the failure to qualify, death, resignation or removal of the executor and Trustee named in the will, or if he for any reason shall cease to act as either executor or Trustee, then Bank is to be appointed as sole executor or Trustee, or both, as the case may require, to carry out the provisions of the will.

The current income beneficiaries of Trust and their shares in distributions from Trust are as follows:

- E (B's issue) - one third;
- F, G, H, and J (C's issue) - collectively one third;
- K, L, and M (D's issue) - collectively one third.

Bank is the current trustee of Trust.

The beneficiaries of Trust executed an agreement on Date 3 proposing the pro rata partition of Trust into two separate trusts, Trust 1 and Trust 2, for the following purposes: (1) to facilitate the pursuit of different investment objectives for the separate trusts, (2) to allow E to participate in the development of a long term investment strategy for Trust 1, (3) to provide E with the ability to remove and replace Bank as trustee of Trust 1, and (4) to change the manner in which Bank would charge its fees

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for serving as trustee of Trust 1.

Trust 1 is to consist of one third of the corpus of Trust and to benefit the issue of B. Trust 2 is to consist of two thirds of the corpus of Trust and to benefit the issue of C and D.

In addition, the agreement provides that the following provisions be applied to Trust 1:

(a) The trustee shall work with the current income beneficiary (or beneficiaries) of the trust to develop a long-term investment policy and strategy for the management of trust.

(b) The trustee shall take into consideration capital gains when making decisions regarding investment changes.

(c) The trustee shall inform the current income beneficiary prior to making any investment changes.

(d) The current income beneficiary (or beneficiaries) of the trust shall have the power to remove the then acting trustee and nominate a successor trustee. Such power of removal and nomination shall be a continuing one and it shall not be deemed to have expired as a result of one or more exercises of the power.

(e) The trustee shall have the right to resign at any time. Thereafter, the current income beneficiary (or beneficiaries) of the trust shall have the right within sixty days to nominate the successor trustee. In the event the current income beneficiary (or beneficiaries) of the trust fails to nominate in writing a successor trustee, the trustee then acting shall nominate the successor trustee.

(f) Any successor trustee nominated under the provisions of paragraph (d) or paragraph (e) above must be a bank or trust organized under the laws of the United States or one of the states thereof, must possess trust powers and must have combined capital and surplus of not less than \$a. Subject to the foregoing requirements, the successor trustee may be located either in or outside State.

The agreement further provides that the following provisions be applied to Trust 1:

(a) As consideration for its prior services to the principal side of the trust and in lieu of a principal termination fee, Bank shall be paid from the principal of the trust a lump sum fee of \$b. Such sum shall be paid immediately following the partition of Trust.

(b) If on or before the expiration of two years from the date of the partition

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of Trust, the current income beneficiary (or beneficiaries) of the trust exercises the power to remove Bank as trustee of Trust 1, Bank shall be paid from the principal of Trust 1, as additional consideration for its prior services to the principal side of the trust and in lieu of a principal termination fee, an additional fee based on the following table:

<u>Removal Occurs In</u>	<u>Additional Fee</u>
First Year	\$ <u>c</u>
Second Year	\$ <u>d</u>

The additional fee otherwise payable to Bank under this subparagraph shall not apply in the event the primary administrative officer for the trust shall cease to be located in Locality in State.

(c) From and after the partition of Trust, Bank shall receive for its services as trustee an annual fee of e percent of the value of the trust corpus. Such fee shall be paid no more frequently than monthly and charged one-half to income and one-half to principal. No other ancillary fees or any kind (except for tax return preparation fees) shall be charged without the prior written approval of the current income beneficiary (or beneficiaries) of Trust 1.

The terms of Trust 2 will remain identical to the terms of Trust.

As part of the agreement, Bank filed Petition with State Court on Date 4. On Date 5, Court issued Order approving the terms of the agreement including the proposed pro rata partition of Trust into Trust 1 and Trust 2.

Trustee has requested a ruling that the proposed pro rata partition of Trust into Trust 1 and Trust 2 and the proposed modification in the terms of Trust 1: 1) will not cause Trust, Trust 1, or Trust 2 to be subject to the GST tax provided that no additions, actual or constructive, have been made to Trust since September 25, 1985 and 2) will not constitute an addition to Trust, Trust 1, or Trust 2.

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

Section 2611(a) provides that, for purposes of the GST tax, the term "generation-skipping transfer" means --

- (1) a taxable distribution,
- (2) a taxable termination, and
- (3) a direct skip.

Section 2612(a)(1) provides that, for purposes of the GST tax, the term "taxable

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termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in 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, for purposes of the GST tax, 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)(1) provides that, for purposes of the GST tax, the term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that, for purposes of the GST tax, the term “skip person” means --

(1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

(2) a trust --

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

(B) if --

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

(ii) 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 GST Tax Regulations provides that the GST 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)(A) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is

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considered an irrevocable trust.

An amendment to a trust that 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 of the beneficiaries originally provided under the terms of the trust.

Based on the information submitted and the representations made, we conclude that the proposed pro rata partition of Trust into Trust 1 and Trust 2 and the proposed modification in the terms of Trust 1 will not affect the quality, value, or timing of any powers, beneficial interests, rights or expectancies of the beneficiaries. Therefore, the proposed pro rata partition of Trust into Trust 1 and Trust 2 and the proposed modification in the terms of Trust 1: 1) will not cause Trust, Trust 1, or Trust 2 to be subject to the GST tax provided that no additions, actual or constructive, have been made to Trust since September 25, 1985 and 2) will not constitute an addition to Trust, Trust 1, or Trust 2.

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

This letter 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,
James C. Gibbons
Assistant to the Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: Copy for § 6110 purposes