

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4-PLR-118248-99

Date:

May 30, 2000

Legend:

Decedent =

CLAT =

Trustee =

Stock =

Court =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Child 1 =

Child 2 =

Child 3 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

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Great-great-grandchild 1 =  
Great-great-grandchild 2 =  
Great-great-grandchild 3 =

Dear :

This is in response to your letter dated November 16, 1999, in which you requested rulings concerning the federal gift, estate, and generation-skipping transfer tax consequences of a judgment and order entered by a court in a proceeding for the construction of the provisions of Decedent's will.

Decedent executed his will on Date 1 and died on Date 2, prior to September 25, 1985. Decedent's will was probated on Date 3. It is represented that there have been no actual or constructive additions to Trust after September 25, 1985.

Item VI of Decedent's will provides that the residue of the estate, both real and personal, of every kind and character, and wherever situated, excluding any property over which Decedent had a power of appointment, is to be held in a charitable lead annuity trust (CLAT).

Item VI(a) of Decedent's will provides that during each of the first sixteen (16) years of CLAT, Trustee is to distribute an annuity amount equal to ten percent (10%) of the initial net fair market value of the assets constituting CLAT to eleven charitable beneficiaries all of which must be organizations which are described in §§ 170(c), 501(c)(3), and 2055(a) of the Internal Revenue Code and which are not described in § 508(d) or 4948(c)(4) of the Code.

Item VI(g) of Decedent's will provides that on the Charitable Termination Date (defined as the date of satisfaction of the charitable obligation imposed by Item VI(a)), Trustee is to separate, designate, divide, and distribute the entire remaining CLAT property in accordance with the provisions of Items VII, VIII, and IX.

Item VIII of Decedent's will provides that on the Charitable Termination Date, Trustee is to distribute Stock, or other property of equivalent value if it should have become necessary to sell Stock before the Charitable Termination Date, to a separate trust for and in the name of each great-grandchild of Decedent who was "in life" at the time of Decedent's death, and in the name of each great-grandchild of Decedent who has predeceased Decedent leaving lineal descendants surviving and then living, together with an amount in cash, marketable securities or other assets which will be equal to all dividends paid on Stock, calculated individually from the date of birth of each great-grandchild in whose name a gift is made until the date of Decedent's death. Great-grandchild 1, Great-grandchild 2, and Great-grandchild 3, for whom Decedent previously made provision by an inter vivos transfer in trust, are specifically excluded from this class.

Item VIII(a)(1) of Decedent's will provides that Trustee is to pay the net income of each trust to the great-grandchild who is the beneficiary of such trust "so long as the great-grandchild shall be in life."

Item VIII(a)(2) of Decedent's will provides that if any great-grandchild predeceases Decedent leaving lineal descendants surviving, or if any great-grandchild dies during the term of the charitable trust, or his or her trust, leaving lineal descendants surviving, Trustee is to

distribute all of the net income (exclusive of capital gains) in equal shares to the surviving lineal descendants of the great-grandchild, provided, however, the lineal descendants surviving and then living of any then deceased child of a great-grandchild are to take, per stirpes and not per capita, the share of net income which the deceased child of the great-grandchild would have taken had he or she been then living.

Item VIII(a)(3) of Decedent's will provides that if any great-grandchild of Decedent dies during the term of the charitable trust, or his or her trust, leaving no lineal descendants surviving, Trustee is to distribute all of the net income (exclusive of any capital gains) in equal shares to the siblings of the great-grandchild (which siblings being great-grandchildren of Decedent who were in life at the time of Decedent's death) surviving, provided, however, the lineal descendants surviving of any then deceased sibling of a great-grandchild are to take, per stirpes and not per capita, the share of net income which the deceased sibling of the great-grandchild would have taken had he or she been then living.

Item VIII(b)(4) of Decedent's will provides that the time of final distribution of each trust is defined to be:

the time after the death of all of the siblings of the great-grandchild in whose name a trust was created (which siblings being great-grandchildren of Decedent who were in life at the time of Decedent's death), when there is no living child of a great-grandchild under the age of twenty-one (21) years; provided, however, if not sooner terminated, each trust is to terminate at the time when twenty-one (21) years have elapsed after the death of the last surviving sibling of a great-grandchild who was in life at the time of Decedent's death.

Item VIII(c) of Decedent's will provides that at the time of final distribution of each trust, Trustee is to divide each trust into as many equal parts or shares as there are then living children of the great-grandchild and children of the great-grandchild who have, prior to this time, died and have lineal descendants surviving and then living. Trustee is to distribute the trust corpus as follows: (1) one equal part or share in fee simple, to each then living child of the great-grandchild; (2) one equal part or share in fee simple, to the lineal descendants, surviving and then living, of each then deceased child of the great-grandchild, and lineal descendants of each then deceased child to take the part or share per stirpes and not per capita.

Item VIII(c)(3) of Decedent's will provides that if at the time of final distribution of each trust, no lineal descendant of the great-grandchild in whose name the trust was created is then living, Trustee is to: (A) divide the trust into as many equal parts or shares as there are then living siblings, if any, of the great-grandchild (which siblings being great-grandchildren of Decedent who were in life at the time of Decedent's death), and such siblings of the great-grandchild who have, prior to such time, died and have lineal descendants surviving and then living, and distribute: (i) one equal part or share in fee simple, to each then living sibling, if any, of the great-grandchild; (ii) one equal part or share in fee simple, to the lineal descendants, surviving and then living, of each then deceased sibling of the great-grandchild, and lineal descendants of each then deceased sibling to take the part or share per stirpes and not per capita.

Item VIII(c)(3)(B) of Decedent's will provides that if no sibling and no lineal descendant of any sibling of the great-grandchild is then living, but Decedent's grandchild who is the parent of the great-grandchild is then living, Trustee is to distribute in fee simple to the then living

grandchild. Item VIII(c)(3)(C), (D), (E), and (F) of Decedent's will provide alternative distribution provisions if the grandchild of Decedent who is the parent of the great-grandchild is not then living.

Great-grandchildren 1 to 14, all of whom are now living, were born prior to the date of Decedent's death. Under Item VIII of Decedent's will, Great-grandchild 1, Great-grandchild 2, and Great-grandchild 3 are specifically excluded from the class of great-grandchildren of Decedent. Thus the class includes only eleven prior-born great-grandchildren, Great-grandchildren 4 to 14.

In addition, four great-grandchildren of Decedent, Great-grandchildren 15 to 18, were in gestation on the date of Decedent's death and were born after the date of Decedent's death. Great-grandchild 15 was born on Date 4, which was 46 days after Decedent's death, and died on Date 5, leaving no descendants. Great-grandchild 16 was born on Date 6, which was 69 days after Decedent's death, and is now living. Great-grandchild 17 was born on Date 7, which was 164 days after Decedent's death, and is now living. Great-grandchild 18 was born on Date 8, which was 176 days after Decedent's death, and died on Date 9, leaving no descendants.

Trustee filed a petition for construction, direction and declaratory judgment in Court concerning the following questions:

(1) Whether the class of great-grandchildren of Decedent who were "in life" at the time of his death for purposes of Item VIII of Decedent's will includes: (a) only Great-grandchildren 4 to 14 who were born prior to the date of Decedent's death (and who are not specifically excluded from the class); (b) Great-grandchildren 4 to 14, as well as Great-grandchildren 15 to 18 who were in gestation at the time of Decedent's death and were born after the date of Decedent's death; or (c) Great-grandchildren 4 to 14 and some but not all of Great-grandchildren 15 to 18 who were in gestation at the time of Decedent's death and were born after the date of Decedent's death?

(2) When is Trustee, pursuant to Items VIII(b)(4) and VIII(c) of Decedent's will, to make the division and distribution of each of the separate trusts created for and in the name of each great-grandchild of Decedent who was "in life" at the time of Decedent's death? In this regard, Item VIII(b)(4) of Decedent's will may be interpreted to mean that a trust for a great-grandchild of Decedent and who has no living child under the age of 21, is to terminate on the later of the Charitable Termination Date, as defined above, or the death of the survivor of such great-grandchild's siblings who were in life at the time of Decedent's death, even if such date occurs before the death of the great-grandchild. On the other hand, Items VIII(a)(1) and (a)(3), in particular, indicate that each trust created for and in the name of each great-grandchild of Decedent who was in life at the time of Decedent's death is not to terminate before the later of the death of the great-grandchild or the death of the survivor of the great-grandchild's siblings who were in life at the time of Decedent's death.

On Date 10, Court entered a provisional final order. In the Order, Court determined as a matter of fact that Great-grandchildren 15 to 18 were in gestation at the time of Decedent's death. Further, Court construed Decedent's will to mean that the class of great-grandchildren of Decedent who were "in life" at the time of Decedent's death consists of Great-grandchildren 4 to 18. Finally, under the order, pursuant to Item VIII(b)(4) of Decedent's will, each trust created for and in the name of each great-grandchild of Decedent "in life" at the time of Decedent's death is to terminate only after the death of the great-grandchild, and otherwise in

accordance with Item VIII of Decedent's will.

Trustee of Trust has requested the following rulings:

1. The implementation of Court order and the resulting distributions from CLAT will not cause CLAT or any trust created under Item VIII of Decedent's will to lose its exempt status for purposes of the generation-skipping transfer tax under § 1433(b)(2)(A) of the Tax Reform Act of 1986.
2. The implementation of Court order and the resulting distributions from CLAT will not cause Children 1 to 3, Grandchildren 1 to 14, Great-grandchildren 1 to 43, or Great-great-grandchildren 1 to 3 to be deemed to have made a generation-skipping transfer or to be subject to generation-skipping transfer taxes under chapter 13 of Subtitle B.
3. The implementation of Court order and the resulting distributions from CLAT will not cause Children 1 to 3, Grandchildren 1 to 14, Great-grandchildren 1 to 43, or Great-great-grandchildren 1 to 3 to be deemed to have made a gift or to be subject to gift taxes under chapter 12 of Subtitle B.
4. The implementation of Court order and the resulting distributions from CLAT will not cause any property owned by CLAT or any trust created under Item VIII of Decedent's will to be included in the gross estate of Children 1 to 3, Grandchildren 1 to 14, Great-grandchildren 1 to 43, or Great-great-grandchildren 1 to 3 under chapter 11, except to the extent that the property of the trusts is distributable upon termination according to the trust terms to such individual or to his or her estate.

#### Ruling Requests 1 and 2

Section 2601 imposes a tax on each generation-skipping transfer. Section 2611(a) defines a "generation-skipping transfer" to mean (1) a taxable distribution, (2) a taxable termination, or (3) a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i), the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985 will be considered irrevocable unless the settlor possessed a power that would have caused the trust to be included in the settlor's gross estate under §§ 2038 or 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust which is excluded from chapter 13 by reason of § 26.2601-1(b)(1), 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 addition, modifications that change the quality, value, or timing of any beneficial interests, rights, or expectancies originally provided for under the terms of a trust instrument will cause a trust that is otherwise exempt from chapter 13 to lose its exempt status.

In the present case, CLAT and the trusts created under Item VIII of Decedent's will were irrevocable on September 25, 1985, and it is represented that there have been no actual or constructive additions to the trusts after September 25, 1985.

In Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), the United States Supreme Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Court concluded that the decision of a state trial court as to an underlying issue of state law should not be controlling when applied to a federal statute. Rather, the highest court of the state is the best authority on the underlying substantive rule of state law to be applied in the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be state law after giving "proper regard" to the state trial court's determination and to relevant rulings of other courts of the state. In this respect, the federal agency may be said, in effect, to be sitting as a state court.

Under State law, the testator's intention is to be sought for by looking to the whole will, and not to detached parts of it. See Cook v. Weaver, 12 Ga. 47 (1852); Sproull v. Graves, 194 Ga. 66 (1942). In addition, under State law, for purposes of construing a bequest under a will, a child en ventre sa mere is regarded as a child in life if the child is afterwards born alive and capable of living. Medlock v. Brown, 163 Ga. 520 (1926); Chandler v. Chandler, 147 Ga. 561 (1918); Downing v. Bain, 24 Ga. 372 (1858); Groce v. Rittenberry, 14 Ga. 232 (1853); Morrow v. Scott, 7 Ga. 535 (1849).

In this case, the Court order interpreting the Decedent's will is consistent with applicable state law as interpreted by the highest court of the State. Accordingly, the Court order is neither a modification nor reformation of any of the provisions of Decedent's will. The Court order thus does not alter the intended quality, value, or timing of any beneficial interests, rights, or expectancies provided for under the terms of Decedent's will. The Court order does not confer any powers or beneficial interests upon any of the beneficiaries that were not conferred by Decedent. Accordingly, the implementation of the Court order and the resulting distributions will not cause CLAT or the trusts created under Item VIII of Decedent's will to lose exempt status for generation-skipping tax purposes, and will not cause Children 1 to 3, Grandchildren 1 to 14, Great-grandchildren 1 to 43, or Great-great-grandchildren 1 to 3 to be deemed to have made a generation-skipping transfer or to be subject to generation-skipping tax under chapter 13 of Subtitle B.

### Ruling Request 3

Section 2501 imposes a gift tax on the transfer of property by gift. Section 2511 provides that the gift tax imposed by § 2501 is to apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible.

As discussed above, the Court order interpreting the Decedent's will is consistent with applicable State law. Accordingly, the implementation of the Court order and the resulting distributions will not cause Children 1 to 3, Grandchildren 1 to 14, Great-grandchildren 1 to 43, or Great-great-grandchildren 1 to 3 to be deemed to have made a gift or to be subject to gift taxes under chapter 12 of Subtitle B.

### Ruling Request 4

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time his death.

Under §§ 2036, 2037, and 2038 the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth) by trust or otherwise, under which he has retained certain lifetime interests, certain reversionary interests, or certain rights to alter the beneficial enjoyment thereof.

As discussed above, the Court order interpreting the Decedent's will is consistent with applicable State law. Accordingly, the implementation of the Court order and the resulting distributions will not cause any property owned by CLAT or the trusts created under Item VIII to be included in the gross estate of Children 1 to 3, Grandchildren 1 to 14, Great-grandchildren 1 to 43, or Great-great-grandchildren 1 to 3 under §§ 2036, 2037, or 2038, except to the extent the property of the trusts is distributable upon their termination, according to the trust terms, to such individual, or his or her estate.

The rulings contained in this letter is 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.

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

These rulings are 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.

Pursuant to a Power of Attorney on file, a copy of this letter is being sent to Trustee.

Sincerely yours,  
By: George L. Masnik  
Chief, Branch

Enclosure  
Copy for section 6110 purposes

cc: