

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

**Person to Contact:**

**Telephone Number:**

Refer Reply To:

CC:PSI:7 / PLR-102453-00

Date:

August 22, 2000

### Legend:

Trust

Decedent

A

B

C

D

E

F

G

H

J

State Court

Company

Petition 1

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Petition 2

Trust A

Trust B

Date 1

Date 2

Date 3

Date 4

Year 1

Year 2

Year 3

a

b

c

d

e

f

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Dear Sir:

We received your letter dated January 21, 2000, requesting a ruling that the proposed non-pro rata partition of Trust into two separate trusts will not cause the two separate trusts to be subject to the Generation-Skipping Transfer (GST) tax imposed by § 2601 of the Internal Revenue Code. This letter responds to your request.

Decedent died testate on Date 1 and under Article Fifth of Decedent's will, Trust was established. In accordance with Article Fifth of Decedent's will, a shares of Company stock were transferred to Trust.

Section 1 of Article Fifth of Decedent's will nominates A to be the trustee of Trust.

Section 2(b) of Article Fifth provides that the net income of Trust is to be distributed in equal shares to A and B so long as both are living. In the event of the death of B, B's one half share of the net income is to be distributed in equal shares to B's children who are living from time to time on the date of distribution of such net income. If B has no then living children, all the net income is to be distributed to A for and during A's lifetime.

Section 2(c) of Article Fifth provides that Trust is to be terminated at the date of A's death. Upon the termination of Trust, the trust estate is to be distributed as follows:

(I) one half of Trust is to be distributed to B if B is then living, or if B is not then living, to B's then living issue. In the event B is not then living and has no then living issue, the one half of Trust is to be distributed to H if H is then living, or if H is not then living, to the then living issue of A and J;

(II) The remaining one half of Trust is to be distributed to H if H is then living, or if H is not then living, to the then living issue of A and J. In the event neither H nor any of the issue of A and J is then living, the remaining one half of Trust is to be distributed to B if B is then living, or if B is not then living, to B's then living issue.

In Year 1, Company went through a reorganization and, as a result, Trust increased the number of shares of Company stock that Trust held to b. In the same year, in conjunction with an initial public offering of Company stock, A, as trustee of Trust, sold c shares of Company stock and used the proceeds to purchase municipal

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bonds. After the public offering and sale of c Company shares, Trust held d shares of Company stock.

In Year 2, Company stock split two for one resulting in Trust owning e shares of Company stock. In Year 3, A, as trustee of Trust, sold f shares of Company stock and purchased additional municipal bonds with the proceeds. After the sale of Company stock, Trust owned g shares of Company stock.

Following the sale of Company stock in Year 3, B requested that Trust be divided into two separate trusts, one for A and A's children, C and D, and one for B and B's children, E, F and G. B made the request to divide Trust into two separate trusts in order to accommodate B's desire to retain the shares of Company stock in Trust and to accommodate A's desire to sell some or all of Company stock.

After A, as trustee of Trust, would not agree to divide Trust, B filed a number of petitions with State Court, including Petition 1 on Date 2, requesting a non-pro rata partition of Trust. B's children subsequently joined in Petition 1. A and A's children objected to the petitions by B and B's children. On Date 3, A's children filed Petition 2 with State Court.

On Date 4, A, B, C, D, E, F and G reached a conditional settlement agreement. A's family and B's family agreed to a non-pro rata but substantially equal partition of Trust into Trust A and Trust B. The settlement agreement was conditioned on: (1) receipt of a favorable private letter ruling from the Internal Revenue Service that the proposed partition would not cause either of Trust A or Trust B to lose GST tax exempt status and (2) approval by State Court.

The terms of the conditional settlement that A, B, C, D, E, F and G agreed to were entered into the State Court record on Date 4. The recorded settlement agreement specifically sets forth the allocation of Trust assets between Trust A and Trust B. The recorded settlement agreement provides that the allocation of the assets is effective on Date 4, even though the actual division of Trust will not occur until the Internal Revenue Service issues a favorable private letter ruling on the GST tax issues and State Court finally approves the settlement agreement.

The settlement agreement provides for the partition of Trust into Trust A and Trust B. A is to remain trustee of Trust A, and B is to be the trustee of Trust B. Except for the different trustees, Trust A and Trust B will contain the same fiduciary responsibilities and administrative powers as Trust. In addition, Trust A and Trust B will contain income distribution provisions identical to the provisions in Trust, except that A will receive the entire net income of Trust A, and B will receive the entire net income of Trust B. The provisions governing the termination and final distributions of Trust A and Trust B also are consistent with those provisions in Trust as set forth in Article Fifth of Decedent's will.

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The settlement agreement also provides that the trustee of Trust, who will be the trustee of Trust A, will not receive a management fee for managing the assets of Trust B. In addition, the trustee of Trust will not have voting power over stock held in Trust B. The settlement agreement further provides that the known assets of Trust on Date 4 are h, i, k, and g shares of Company stock. Finally, the settlement agreement provides that Trust A will consist of m shares of Company stock valued at \$n and other cash adjustments valued at \$o for a total value on Date 4 of \$p. Trust B will consist of q shares of Company stock valued at \$r, plus cash adjustments valued at \$s for a total value on Date 4 of \$p.

You represent that no member of A's family or B's family is a "lineal descendant" of Decedent within the meaning of § 2651(b) of the Code. For purposes of this ruling request, however, you have represented that both A and B were "skip persons" within the meaning of § 2613 of the Code based on their respective dates of birth and the estimated date of birth of Decedent. Further, A's children and B's children are certainly "skip persons" with respect to Decedent, based on their respective dates of birth.

You also represent that no additions, actual or constructive, have been made to Trust after September 25, 1985.

You have requested the following rulings:

1) Following the non-pro rata but substantially equal partition of Trust into Trust A and Trust B, both Trust A and Trust B: i) will be considered to have exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1) of the Generation-Skipping Transfer Tax regulations, and ii) will not be considered to have received any additions actual or constructive on or after September 25, 1985 so that GST transfers under Trust A and Trust B are exempt from the GST tax; and

2) The non-pro rata but substantially equal partition of Trust into Trust A and Trust B will not subject Trust A or Trust B or any beneficiaries under Trust A or Trust B to the GST tax.

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.

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Section 2612(a)(1) provides that, for purposes of the GST tax, the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a 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 such 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 distribution 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 2651(a) provides that, for purposes of the GST tax, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in § 2651.

Section 2651(b) provides that

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(1) An individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

(2) An individual who is a lineal descendant of a grandparent of a spouse (or former spouse) of the transferor (other than such spouse) shall be assigned to that generation which results from comparing the number of generations between such grandparent and such individual with the number of generations between such grandparent and such spouse.

(3) For purposes of this subsection –

(A) A relationship by legal adoption shall be treated as a relationship by blood.

(B) A relationship by the half-blood shall be treated as a relationship of the whole-blood.

Section 2651(d) provides that an individual who is not assigned to a generation by reason of the foregoing provisions of § 2651 shall be assigned to a generation on the basis of date of such individual's birth with --

(1) an individual born not more than 12 ½ years after the date of the birth of the transferor assigned to the transferor's generation,

(2) an individual born more than 12 ½ years but not more than 37 ½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and

(3) similar rules for a new generation every 25 years.

Section 26.2601-1(b)(1)(i) provides that the generation-skipping transfer 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 considered an irrevocable trust.

Any 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,

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or timing of any of the powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of the trust.

We have examined the conditional settlement agreement and believe that although the agreement provides for a non-pro rata allocation of the corpus of Trust between Trust A and Trust B, the allocation of assets is substantially equal. In addition, we believe the allocation of assets is within the range of reasonable settlement agreements. Further, the terms of the settlement agreement fairly reflect the relative merits of the positions of A's family and B's family.

Based on the information submitted and the representations made, we conclude that the conditional settlement agreement entered into the State Court record on Date 4 does not alter the intended quality, value, or timing of the interests Decedent created in the will. Specifically, we also conclude that the proposed non-pro rata but substantially equal partition of Trust into Trust A and Trust B will not modify or otherwise change the quality, value, or timing of any powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of Decedent's will. Further, we conclude that after the proposed non-pro rata partition of Trust based on the Date 4 allocations that were entered into the State Court record, Trust A and Trust B will continue to be exempt from the GST tax under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1) of the GST Tax regulations. Finally, we conclude that no additions, actual or constructive, have been made to Trust, Trust A or Trust B as a result of the partition, and neither distributions from, nor termination of, Trust A or Trust B will be subject to the GST tax.

This ruling is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

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,  
Christine E. Ellison  
Chief, Branch 7  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure: Copy for §6110 purposes