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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-112321-13

Date:
September 11, 2013

Legend

Decedent =
Date =
Trust =
Grandchild =
X =
Annuity =

Dear :

This letter responds to your representative's letter dated February 6, 2013, requesting a ruling pertaining to the generation-skipping transfer (GST) tax consequences of an annuity contract that passed to a trust.

The facts submitted and representations made are as follows. Decedent died on Date, a date that occurred in 2010. When Decedent died, she owned an annuity (Annuity) that had been maintained by a commercial insurance company. Upon her death, Decedent designated that X percent of the Annuity pass to a trust (Trust) established for the benefit of her grandchild (Grandchild).

The executor of Decedent's estate timely filed Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent, to make the election under § 1022 and to allocate basis as provided by § 1022 of the Internal Revenue Code. Executor attached Schedule R, Generation-Skipping Transfer Tax, to Form 8939 and allocated Decedent's remaining GST exemption to other trusts established under Decedent's will. None of Decedent's GST exemption was allocated to Trust.

Pursuant to the terms of Trust, the trustee will receive the required minimum distributions for a term based on Decedent's life expectancy. During this term, the trustee of Trust is required to distribute annually the amounts paid to the trust to Grandchild. The trustee may accelerate distributions at any time for Grandchild's health, education, maintenance, and support. If Grandchild dies before the end of the Annuity's distribution period, then Grandchild's issue are entitled to the remaining distributions as beneficiaries of Trust. If Grandchild dies before the end of the distribution period and is not survived by issue, then Grandchild's surviving siblings become the beneficiaries of Trust. At the end of the distribution period, Trust will terminate and the trustee will distribute any remaining assets outright to the current beneficiaries of Trust.

Rulings Requested

1. Trust is a skip person under § 2613(a)(2).
2. The X percent allocable portion of Annuity passing to Trust on Date is a direct skip subject to the provisions of chapter 13 as of that date.
3. Decedent is the transferor of Annuity to Trust for purposes of chapter 13.
4. For purposes of chapter 13, the amount of the transfer is X percent of the value of Annuity determined as of Date.
5. The GST tax resulting from the direct skip of X percent of Annuity to Trust on Date is the value of the interest on Date multiplied by zero.
6. Under § 2653(a), Trust will be treated as if the transferor were assigned to the first generation above the highest generation of any person who has an interest in Trust immediately after the GST.
7. Periodic payments made after Date from Annuity to Trust and then from Trust to Grandchild while Grandchild is alive are not subject to GST tax.

Rulings 1 through 5

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means a taxable termination, a taxable distribution, and a direct skip.

Section 2612(c)(1) provides that a "direct skip" is a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a "skip person."

Section 2613(a)(1) provides that the term “skip person” means a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor. Section 2613(a)(2) provides that a trust is a skip person: (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 distributions on termination) be made from such trust to a non-skip person.

Section 26.2612-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides that a trust is a skip person if: (i) All interests in the trust are held by skip persons; or (ii) No person holds an interest in the trust and no distributions, other than a distribution the probability of which occurring is so remote as to be negligible (including distributions at the termination of the trust), may be made after the transfer to a person other than a skip person. For this purpose, the probability that a distribution will occur is so remote as to be negligible only if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the distribution will occur.

Section 2652(a)(1)(A) provides that the term “transferor” means, in the case of any property subject to the estate tax, the decedent.

Section 2652(c)(1) provides, in part, that a person has an interest in property held in trust if (at the time the determination is made) such person: (A) has a right (other than a future right) to receive income or corpus from the trust; or (B) is a permissible current recipient of income or corpus from the trust and is not described in § 2055(a).

Section 2602 provides that the amount of the GST tax is the taxable amount multiplied by the applicable rate.

Section 2623 provides that the taxable amount in the case of a direct skip is the value of the property received by the transferee.

Under § 2624(b), in the case of any direct skip of property which is included in the transferor’s gross estate, the value of such property for purposes of chapter 13 is the same as its value for purposes of chapter 11 (determined with regard to §§ 2032 and 2032A).

Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the applicable fraction determined for the trust from which such transfer is made or for such skip. The “applicable fraction,” as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in

the direct skip reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 301(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 113-312 (124 Stat. 3296) (TRUIRJCA), retroactively reinstated the GST tax for generation-skipping transfers that occurred during 2010. Notice 2011-66, 2011-35 I.R.B. 184, § II.A. provides that the GST tax applies to generation-skipping transfers that occur as a result of a decedent's death, regardless of whether an election is made under § 1022. Notice 2011-66, § II.D. provides that for purposes of chapter 13, the Treasury Department and Internal Revenue Service will continue to construe and apply any reference to chapter 11 without regard to whether the executor of the decedent's estate who died in 2010 made an election under § 1022.

Section 302(c) of TRUIRJCA provides that for each GST occurring during 2010, the applicable rate under § 2641(a) is zero. Notice 2011-66, § II. A interprets this provision of TRUIRJCA to mean that the maximum federal estate tax rate for purposes of computing the GST Tax on such a transfer is deemed to be zero, which when multiplied by any inclusion ratio, will result in an applicable rate of zero.

In the present case, Grandchild is two generations below Decedent and is the only person who has an "interest" in Trust for purposes of § 2652(c)(1)(A). Grandchild is a permissible current recipient of income or corpus from Trust, and no other person has any present right to receive income or corpus or is a permissible current distributee of income or corpus. If Grandchild predeceases the termination of Trust, all remaindermen are skip persons as well. Accordingly, since all interests, as that term is defined in § 2652(c)(1)(A), in Trust are held by skip persons with respect to the Decedent, Trust is a skip person under § 2613(a)(2). Therefore, based on the facts presented and representations made, we conclude that the X percent allocable portion of Annuity passing to Trust on Date is a direct skip subject to the provisions of chapter 13 as of that date.

Annuity is not subject to the tax under chapter 11 because Decedent's executor made an election under § 1022. Under Notice 2011-66, any reference to chapter 11 under chapter 13 applies as if the decedent was subject to chapter 11 even if the decedent's executor made an election under § 1022. If the executor of Decedent's estate had not made the election under § 1022, the value of the Annuity would have been included in Decedent's gross estate for federal estate tax purposes. Accordingly, Decedent is considered the transferor of X percent of Annuity under § 2652(a)(1)(A).

Pursuant to § 2623 and 2624(b), the taxable amount of the direct skip is the value of X percent of the Annuity that would have been included in Decedent's estate on Date. The executor of Decedent's estate did not allocate any of Decedent's GST exemption to the direct skip. Thus, the applicable fraction for purposes of chapter

13 is 1. However, under Notice 2011-66 and TRUIRJCA, the maximum federal estate tax rate for purposes of chapter 13 is deemed to be zero. Accordingly, the GST tax on the direct skip is zero.

Based on the facts presented and representations made, we conclude that the transfer of Annuity from Decedent to Trust is a direct skip that occurred on Date. Decedent is the transferor of X percent of Annuity for purposes of chapter 13. Furthermore, the value of the direct skip is the value of X percent of Annuity on Date, and the GST tax on the direct skip is zero. See § 2624(b).

Rulings 6 and 7

Section 2653(a) provides that if: (1) there is a generation-skipping transfer of any property; and (2) immediately after such transfer such property is held in trust, for purposes of applying chapter 13 (other than § 2651) to subsequent transfers from the portion of the trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

In § 26.2653-1(b), Example 1, T transfers property to an irrevocable trust for the benefit of T's grandchild, GC, and great-grandchild, GGC. During GC's life, the trustee has discretion to distribute the trust income to GC and GGC. At GC's death, the trust property passes to GGC. The example explains that both GC and GGC have an interest in the trust for purposes of chapter 13. The transfer by T to the trust is a direct skip, and the property is held in trust immediately after the transfer. After the direct skip, the transferor is treated as being one generation above GC, the highest generation individual having an interest in the trust. The example concludes that GC is no longer a skip person and distributions to GC are not taxable distributions. However, because GGC occupies a generation that is two generations below the deemed generation of T, GGC is a skip person and distributions of trust income to GGC are taxable distributions.

As stated above, the transfer of X percent Annuity to Trust as a result of Decedent's death was a direct skip on Date. Based on the facts presented and representations made, under § 2653(a), Trust is treated as if the Decedent was assigned to the first generation above the highest generation of any person who has an interest in Trust immediately after the GST. Thus, we conclude that periodic distributions made after Date from Annuity to Trust and then from Trust to Grandchild while Grandchild is alive are not subject to GST tax.

Furthermore, 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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,

James F. Hogan
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: