

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-125656-17

Date:  
January 16, 2018

### Legend

Trust =  
Trust A =

Trust B =  
Trust C =  
Trust D =  
Trust E =  
Trustee =  
Grantor =  
Daughter =  
Granddaughter 1 =  
Granddaughter 2 =  
Granddaughter 3 =  
Grandson =  
Great-grandson 1 =  
Great-grandson 2 =  
Great-grandson 3 =  
Great-granddaughter =  
Court =

First Partition Order =

Second Partition Order =

Date 1 =

Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=

Dear \_\_\_\_\_ :

This is in response to your personal representative's letter of August 9, 2017, and supplemental correspondence, in which rulings are requested on the income, gift, and generation-skipping transfer (GST) tax consequences of a modification of Trust A.

The facts and representations submitted are summarized as follows:

Grantor executed Trust on Date 1 and amended Trust on Date 2. Trust, a revocable trust established for the primary benefit of Daughter, Granddaughter 1, Granddaughter 2, Granddaughter 3, Grandson, Great-grandson 1, Great-grandson 2, Great-grandson 3, and Great-granddaughter, became irrevocable when Grantor died on Date 3, a date prior to September 25, 1985.

Article III, Paragraph B of Trust, as amended, provides that from and after the death of Grantor, the trustee is to pay, on the income distribution date, the entire net income of the Trust estate to Daughter so long as she shall live.

Article III, Paragraph C provides that from and after the death of the last to survive of Grantor and Daughter and continuing until the death of the last to survive of Granddaughter 1, Granddaughter 2, Granddaughter 3, Grandson, Great-grandson 1, Great-grandson 2, Great-grandson 3, and Great-granddaughter, the trustee is to pay the entire net income on the income distribution date in equal shares to Granddaughter 1, Granddaughter 2, Granddaughter 3 and Grandson who are living on each income distribution date, and to the lawful issue living on each income distribution date of said grandchildren who are then deceased leaving one or more lawful issue then living, the issue of a deceased grandchild in each case to take among them, *per stirpes*, the share of the net income the grandchild would take were he or she then living.

Article III, Paragraph D provides that on the death of the last to survive of the grandchildren and great-grandchildren named in Article III, Paragraph C, the trustee is to pay and distribute the principal of the Trust estate in equal shares *per stirpes* to the then living lawful issue, if any, of Granddaughter 3, Great-grandson 1, Great-grandson 2, Great-grandson 3, and Great-granddaughter, of whom issue is then living.

Article III, Paragraph E provides that if, under this or any other Article of the Trust, any portion of the principal of the Trust estate becomes payable to issue of any of Grantor's

grandchildren named in Article III who is, at the time of the distribution, less than 21 years of age, that portion is to immediately vest in the issue, but distribution thereof is to be postponed by the trustee until the issue attains the age of 21 years and, in the meantime, the trustee is to pay the net income of that portion to the issue.

Article III, Paragraph F provides that each and every trust, if any, still in existence on the day 21 years after the death of the last to survive of Grantor and all of the beneficiaries named or described in the Trust (who were living when Grantor executed the Trust) is to terminate forthwith and the trustee is to pay and distribute the trust or part to the then income beneficiary thereof. If there is more than one income beneficiary, the distribution is to be made to the beneficiaries in the proportions in which they are then receiving the income.

Daughter and Grandson died prior to Date 4. On Date 4, after proper notice to all interested parties and hearing of a petition filed by Grandson, Court issued First Partition Order. In accordance with First Partition Order, Trustee divided Trust along family lines into five separate trusts as follows:

Trust A for Granddaughter 1 as to a 25% interest;  
Trust B for Granddaughter 2 as to a 25% interest;  
Trust C for Granddaughter 3 as to a 25% interest;  
Trust D for Great-grandson 3 as to a 12.5% interest;  
Trust E for Great-granddaughter as to a 12.5% interest.

In a prior private letter ruling, we ruled that the division of Trust in accordance with First Partition Order did not: (a) cause these new trusts, or their beneficiaries to realize gain or loss from a from a sale or disposition under § 1001, (b) result in a transfer by any beneficiary of Trust subject to the gift tax under § 2501, or (c) cause distributions from these new trust to be subject to GST tax imposed by chapter 13, provided no additions are made to the trusts after September 25, 1985.

This letter applies only to Trust A. Trustee is the trustee of Trust A, and Granddaughter 1 is the current beneficiary of Trust A. Granddaughter 1 has five living children, including Great-grandson 1, and several living grandchildren.

On Date 5, after proper notice to all interested parties and hearing of a petition filed by Trustee, Court issued Second Partition Order. Second Partition Order provides that, subject to Trustee receiving a favorable GST tax ruling from the Internal Revenue Service, Trust A is modified to provide that upon the death of Granddaughter 1, Trust A shall be equally divided or partitioned into separate trusts for the benefit of each living child of Granddaughter 1 and for the benefit of each group comprised of the living descendants of a deceased child of Granddaughter 1, *per stirpes*.

In order to satisfy the income distribution requirements set forth in Article III, Paragraph C of Trust, Second Petition Order directs that subsequent to partition, if an income beneficiary is deceased such deceased beneficiary's then living issue shall be entitled to the net income the deceased beneficiary would have received if then living. Additionally, if an income beneficiary dies without leaving issue then living, then the net income that would have been distributed to the deceased beneficiary shall instead be distributed pro-rata to the other income beneficiaries with reference to the beneficial percentage interests then held pursuant to the Article III, Paragraph C of Trust.

In order to satisfy the ultimate distribution requirements set forth in Article III, Paragraph D of Trust, Second Petition Order further directs that upon the death of the last to survive of those persons specifically mentioned in Article III, Paragraph D of Trust (including Great-grandson 1, a son of Granddaughter 1), each of the separate trusts to be created upon the death of Granddaughter 1 must be allocated and distributed ten percent (10%) to Trust D; ten percent (10%) to Trust E; and eighty (80%) to the then living issue of Great-grandson 1, *per stirpes*; however, if Great-grandson 1 dies leaving no surviving issue, then such eighty percent (80%) balance shall be divided equally among the shares of the persons named in Article III, Paragraph D of Trust who die leaving issue then living and then distributed as set forth in that Article.

It is represented that Trust was irrevocable prior to September 25, 1985, and that no additions, actual or constructive have been made to Trust or Trust A since that time.

You have requested the following rulings:

1. The modification of Trust A to provide for partition in accordance with the terms of Second Partition Order will not cause Trust A, or new trusts resulting from that partition, or their beneficiaries, to realize any gain or loss from a sale or disposition under § 1001.
2. The modification of Trust A to provide for partition in accordance with the terms of Second Partition Order will not cause any beneficiary of Trust A to be subject to the gift tax under § 2501.
3. The modification of Trust A to provide for partition in accordance with the terms of Second Partition Order will not cause Trust A, or new trusts resulting from that partition, or their beneficiaries, to be subject to GST tax under § 2601.

Ruling No. 1:

Section 61(a)(3) provides that gross income includes gains derived from dealings in property, and § 61(a)(15), from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. There is a material difference when the exchanged properties embody legal entitlements different in kind or extent or if they confer different rights and powers. *Cottage Savings Association v. Commissioner*, 499 U.S. 554, 565 (1991).

A pro-rata partition of jointly owned property is not a sale or other disposition of property if the co-owners of the joint property sever their joint interests but do not acquire a new or additional interest as a result thereof. Thus, neither gain nor loss is realized on a partition. Rev. Rul. 56-437, 1956-2 C.B. 507.

As ordered by Court, the partition of Trust A into separate trusts upon the death of Granddaughter 1 has been structured to satisfy the income distribution requirements and the ultimate distribution requirements of the original trust and Trust A. The legal entitlements, as well as the rights and powers, of the income beneficiaries and the remainder beneficiaries will remain the same in kind and extent after partition of Trust A. Thus, there will be no material difference in the positions of beneficiaries of Trust A after the partition of Trust A into separate trusts upon the death of Granddaughter 1.

Accordingly, based on the facts submitted and representations made, we conclude that the modification of Trust A to provide for partition in accordance with the terms of Second Partition Order will not cause Trust A, or new trusts resulting from that partition, or their beneficiaries, to realize any gain or loss from a sale or disposition under § 1001.

#### Ruling No. 2:

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

As ordered by Court, the partition of Trust A into separate trusts upon the death of Granddaughter 1 has been structured to satisfy the income distribution requirements and the ultimate distribution requirements of the original trust and Trust A. The legal entitlements, as well as the rights and powers, of the income beneficiaries and the remainder beneficiaries will remain the same in kind and extent after partition of Trust A. Thus, there will be no material difference in the positions of beneficiaries of Trust A after the partition of Trust A into separate trusts upon the death of Granddaughter 1. Because the beneficial interests, rights, and expectancies of the beneficiaries are substantially the same, both before and after the modification of Trust A to provide for partition of Trust A, no transfer of property will be deemed to occur as a result of the modification and the partition in accordance with Second Partition Order.

Accordingly, based on the facts submitted and representations made, we conclude that the modification of Trust A to provide for partition in accordance with the terms of Second Partition Order will not cause any beneficiary of Trust A to be subject to the gift tax under § 2501.

Ruling No. 3:

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(a) of the Generation-Skipping Tax Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601(b)(1)(i), the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

Section 26.2601-1(b)(4) 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 under § 26.2601-1(b) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains exempt status for generation-skipping tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument by judicial reformation, or nonjudicial reformation that is valid under applicable state law will not cause an exempt trust to be subject to the GST tax, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 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 a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST or the creation of a new GST.

Section 26.2601-1(b)(4)(i)(E), Example 5, provides as follows. In 1980, Grantor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, *per stirpes*. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, *per stirpes*. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, *per stirpes*. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, Trust was irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, have been made to Trust or Trust A after that date.

The modification of Trust A to provide for its partition on the death of Granddaughter 1 is similar to the change described in § 26.2601-1(b)(4)(i)(E), Example 5. As ordered by Court, the partition of Trust A into separate trusts upon the death of Granddaughter 1 has been structured to satisfy the income distribution requirements and the ultimate distribution requirements of the original trust and Trust A. The legal entitlements, as well as the rights and powers, of the income beneficiaries and the remainder beneficiaries will remain the same in kind and extent after partition of Trust A. Thus, there will be no material difference in the positions of beneficiaries of Trust A after the partition of Trust A into separate trusts upon the death of Granddaughter 1. The partition of Trust A in accordance with Second Partition Order will not shift any beneficial interest in Trust A to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the partition. In addition, the partition will not extend the time for vesting of any beneficial interest in Trust A beyond the period provided for in the original trust.

Accordingly, based on the facts submitted and representations made, we conclude that the modification of Trust A to provide for partition in accordance with the terms of Second Partition Order will not cause Trust A, or trusts resulting from that partition, or their beneficiaries, to be subject to GST tax under § 2601.

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.

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.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman

Chief, Branch 4

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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