

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7 / PLR-116091-99

Date:

May 5, 2000

Legend:

Trust 1

Trust 2

Trust 3

Bank

Court

State

A

B

C

D

E

F

G

H

J

Date 1

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Date 2

Date 3

Date 4

Date 5

Year 1

Year 2

Dear :

We received your letter dated September 17, 1999, requesting a ruling that the proposed modification of Trust 1, Trust 2, and Trust 3 ("Trusts") will not cause the 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.

A created Trust 1 on Date 1. B created Trust 2 and Trust 3 on Date 2 and Date 3, respectively. Trust 1 and Trust 2 were irrevocable on September 25, 1985.

B's personal representative filed Form 706 and a supplemental Form 706 in Year 1 and Year 2, respectively. These forms, as filed, included a statement from a qualified physician certifying that B was mentally incompetent at all times on and after October 22, 1986 and did not regain competence to modify or revoke the terms of Trust 3 before B's death on Date 4. Because B's personal representative included the qualified physician's statement to establish that Trust 3 was exempt from the GST tax, B's personal representative did not allocate any of B's GST exemption amount on Schedule R. The Service issued a Federal estate tax closing letter on Date 5 to B's personal representative accepting the estate tax return after an adjustment unrelated to the issue of the GST exempt status of Trust 3 and B's mental incompetency.

The terms of Trusts 1, 2 and 3 direct that, after the death of A and B, the Trusts benefit the lineal descendants of A and B. All powers relating to distributions from the Trusts must be exercised solely by trustees who are not the beneficiaries of the Trusts. Each trust is to be terminated twenty years after the death of the survivor of A and B's issue as named in the respective trust instruments.

C, E, F, G, and H are the beneficiary-trustees of the Trusts. Bank is the corporate trustee of the Trusts. In the past, D, a beneficiary of the Trusts, and J, an unrelated party, both of whom are now deceased, served as trustees of the Trusts. J served as individual, independent trustee of the Trusts. The terms of the Trusts dealing with the election of successor trustees are identical. The terms of the Trusts are: when the number of the individual trustees is reduced to two, those two individual trustees,

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together with Bank, are empowered to elect successor trustees. The terms of the Trusts do not provide for the election of a successor individual, independent trustee.

The trustees and beneficiaries desire to assure the continuity of trustees by modifying the terms of the Trusts to empower the remaining trustees to elect successor trustees to fill vacancies from time to time. The trustees and beneficiaries also desire to continue the office of individual, independent trustee.

The trustees will request Court to modify, under State statutes, the terms of the Trusts to empower a majority of the trustees, including the corporate trustee, acting in their fiduciary capacity, to elect successor trustees to fill the vacancies caused by any trustee, including D, who fails to serve from time to time.

You represent that no additions, actual or constructive, were made to Trust 1, 2 or 3 after September 25, 1985.

You have requested that we rule that the changes in the terms of the Trusts to allow a majority of the trustees to elect successor trustees as vacancies occur, including the vacancy created by D's death, and a successor individual, independent trustee (1) will not cause the Trusts to lose their GST exempt status, and (2) will not cause the GST tax to apply to future distributions from the Trusts to skip persons or on the death of C.

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 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

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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 26.2601-1(b)(1)(i) of the GST Tax Regulations provides in part 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 (as defined in § 2652(b)) in existence on September 25, 1985, is considered an irrevocable trust.

Section 26.2601-1(b)(3)(i) provides that if an individual was under a mental disability to change the disposition of his or her property continuously from October 22, 1986, until the date of his or her death, the provisions of chapter 13 do not apply to any generation-skipping transfer --

(A) Under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during the individual's life after October 22, 1986); or

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(B) Which is a direct skip (other than a direct skip from a trust) that occurs by reason of the death of the individual.

Section 26.2601-1(b)(3)(iii)(A) provides that, if there has not been a court adjudication that the decedent was mentally incompetent on or before October 22, 1986, the executor must file, with Form 706, either --

(1) A certification from a qualified physician stating that the decedent was

(i) mentally incompetent at all times on and after October 22, 1986; and

(ii) did not regain competence to modify or revoke the terms of the trust or will prior to his or her death; or

(2) Sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement why no certification is available from a physician; and

(3) Any judgment or decree relating to the decedent's incompetency that was made after October 22, 1986.

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, 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 changes in the terms of the Trusts will not affect the quality, value, or timing of any powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of the Trusts. We further conclude that the right of a majority of the trustees to elect successor trustees as vacancies occur is administrative in nature and will not confer any additional powers or beneficial interests upon any of the beneficiaries. Therefore, the proposed changes will not affect the GST tax exempt status of the Trusts. In addition, we conclude that future distributions from the Trusts to skip persons or on the death of C will not 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.

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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 Assistant Chief Counsel
(Passthroughs and Special Industries)