



According to the facts submitted, Decedent executed her Will on Date 2, the First Codicil on Date 3, and the Second Codicil on Date 4, and Decedent died on Date 5, all dates prior to September 25, 1985.

Paragraph 5 of Decedent's Will provides that all the rest, residue, and remainder of Decedent's estate is to be divided into as many parts of equal value as Decedent leaves children surviving her; provided, however, that for the purposes of the division any child who predeceases Decedent leaving issue who survive Decedent are to be considered as surviving Decedent. Thereupon each part is to be divided into as many shares of equal value as the child for whom such part was created shall have children surviving Decedent; provided, however, that for purposes of such subdivision into shares any grandchildren who predecease Decedent leaving issue who survive Decedent are to be considered as surviving Decedent.

Paragraph 6 provides that the shares created under Paragraph 5 are to be given to the Trustees in trust, referred to as Residuary Trusts.

Paragraph 9(a) provides that in the case of a Residuary Trust established for a grandchild who survives Decedent, twenty (20) years and six (6) months from the date of Decedent's death (Date 7) or upon the death of the grandchild for whom the trust was created, whichever is later, the Residuary Trust is to terminate and the trust estate is to be distributed to such one or more persons or corporations in such shares, manner and proportion as the grandchild may appoint by will, but if the power of appointment is not exercised, to the issue of the grandchild for whom the Residuary Trust was created, but if none of the grandchild's issue are then living, to the issue of the closest lineal ancestor of such person, which ancestor was an issue of Decedent and has issue then living, but if none of such issue is then living, to Decedent's issue. However, any portion of a Residuary Trust which upon a later date would otherwise be distributed to one or more persons for whom a Residuary Trust is then in force shall, instead, be added to the trust estate of that Residuary Trust and held for the uses and purposes thereof.

Paragraph 10 provides, in pertinent part, that during the period from the date of Decedent's death until Date 7, the Trustees of each Residuary Trust shall distribute, as an annual guaranteed annuity, five percent of the net fair market value, as finally determined for federal estate tax purposes, of Decedent's Residuary Estate, on the date of Decedent's death or the alternate valuation date, for Charitable Purposes, as defined in the Will. Such guaranteed annuity amounts shall be paid currently and periodically, and at least semi-annually, it being Decedent's intention that such guaranteed annuity be an interest in the Residuary Trusts in the form described in section 2055(e)(2)(B) of the Code. After Date 7, the income of the trust estates of the Residuary Trusts may be distributed to such trusts created for one of Decedent's grandchildren who survives Decedent, to any one or more of the members of a class of persons composed of the grandchild for whom such Residuary Trust was created, such grandchild's spouse, such grandchild's issue, and the spouses of such grandchild's issue; but if neither such

grandchild nor any of such grandchild's issue is living at the time of a distribution, to any one or more of the members of a class of persons composed of Decedent's issue and the spouses of Decedent's issue.

Under the terms of Paragraph 5 of Decedent's Will a Residuary Trust (Trust) was established for the benefit of Decedent's grandson, G. G is the child of Decedent's son H who died on Date 1. Under the terms of Trust, no distributions were permitted to be made to G, G's spouse, G's issue, or the spouses of G's issue, until Date 7. Prior to Date 7, G and G's wife petitioned Court for a judicial modification of Trust. The other parties before Court were Bank, the trustee of Trust; each of G's six children, individually and as a virtual representative of a class consisting of (i) G's unborn children and more remote issue and (ii) the takers under or in default of G's exercise of his testamentary power of appointment over Trust; the spouses of each of G's children as are currently married, individually and as a virtual representative of a class consisting of any future spouses of G's issue; each of G's nine grandchildren, individually and as a virtual representative of a class consisting of G's unborn grandchildren and more remote issue and the takers under or in default of G's exercise of his testamentary power of appointment over Trust; Foundation; and the Attorney General of State.

After consideration of the pleadings filed and the evidence presented, on Date 6, date prior to Date 7, Court made the following findings. G and G's wife were in a position of financial hardship. As a consequence, G filed for personal bankruptcy as a "voluntary debtor" under Chapter 7, Title 11 of the United States Code. At the time that Trust was executed under Decedent's Will, G's financial situation was secure, and Decedent could not have anticipated that G would not be able to maintain his and his wife's accustomed standard of living by relying on his own source of funds, until Date 7. Failure to modify Trust to permit distributions to be made to G and G's wife before Date 7 would substantially impair the accomplishment of one Decedent's purposes in establishing Trust. This purpose was to support G and his wife so that they could maintain the standard of living they enjoyed during Decedent's lifetime and at the time of Decedent's death.

The Court modified Decedent's Will to permit the remaining semi-annual guaranteed annuity payments for Charitable Purposes to be satisfied by a single cash distribution in the amount of \$Q to be made on Date 6 to three designated charitable organizations. The distribution represented the net present value of the remaining guaranteed annuity payments, to be determined in accordance with the applicable provisions of the Internal Revenue Code. The Court also modified Decedent's Will to provide that from Date 6 until Date 7, distributions could be made from Trust to G and G's wife. After Date 7, distributions could be made from Trust to any one or more of the members of a class of persons composed of G, G's wife, G's issue, and the spouses of such issue; but if neither G, G's Wife, nor any of G's issue is living at the time of a distribution, to any one or more members of a class of persons composed of Decedent's issue and the spouses of Decedent's issue. Trust will still terminate upon the later to

occur on Date 7 or G's death. Date 7 has already passed, so Trust will terminate on G's death.

The following ruling is requested.

The modification of Trust did not cause a beneficial interest in Trust to be shifted to a beneficiary who occupies a generation lower than the beneficiaries who held the interests prior to the modification, and did not extend the time for vesting of any beneficial interest in Trust beyond the period originally provided in Decedent's Will and, accordingly, Trust will remain exempt from GST tax under section 2601 and distributions during the term of Trust and terminating distributions will not be subject to chapter 13.

## LAW AND ANALYSIS

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

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on

but only to the extent that such transfer was not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii) provides that, unless otherwise provided in either paragraph (b)(1)(ii)(B) or (C) of this section (pertaining to trusts includible in the gross estate of the settlor under section 2038 or 2042, if the settlor had died on , any trust (as defined in section 2652(b)) in existence on , is considered an irrevocable trust.

Section 26.2601-1(b)(4)(i) provides rules for determining whether a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy section 26.2601-1(b)(4)(i)(A), (B), or (C), of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable

state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in section 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.

Section 26.2601-1(b)(4)(i)(D)(2) provides that, for purposes of this section, 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 generation-skipping transfer or the creation of a new generation-skipping transfer.

Trust was irrevocable on \_\_\_\_\_, and it is represented that no additions have been made to Trust since that date.

State Statute provides that, on the petition of a trustee or beneficiary, a court may order that the terms of a trust be modified if: (1) the purposes of the trust have been fulfilled or have become illegal or impossible; or (2) because of circumstances not known to or anticipated by the settler, compliance with the terms of the trust would defeat or substantially impair the accomplishment of the purposes of the trust.

Based upon the facts and representations made, we conclude that the modification of Trust did not shift a beneficial interest in Trust to any beneficiary who occupies a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification did not extend the time for vesting of any beneficial interest in Trust beyond the period originally provided for in Trust. Accordingly, we rule that Trust will remain exempt from GST tax under section 2601 and distributions during the term of Trust and terminating distributions will not be subject to the provisions of chapter 13.

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.

We are specifically not ruling on the effect of the modification of Trust on the qualification of Trust for the estate tax charitable deduction under section 2055.

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

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,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Associate Office of Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy of Letter for section 6110 purposes