

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-116469-01

Date:

December 11, 2001

Re:

Legend:

Settlor 1 =

Settlor 2 =

Daughter 1 =

Daughter 2 =

Trust =

Trust 1 =

Trust 2 =

Trustee 1 =

Trustee 2 =

Trustee 3 =

Bank =

Date 1 =

State =

Dear :

This is in response to your letter of February 10, 2001, in which you request a ruling on the application of the generation-skipping transfer (GST) tax provisions of chapter 13 of the Internal Revenue Code to the proposed modification to Trust.

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On Date 1, Settlor 1 and Settlor 2, husband and wife, created an irrevocable inter vivos trust for the benefit of Settlers' issue.

Article VI provides that Trustee 1 will be Trustee. If due to death, resignation, refusal or inability to serve, Trustee 1 is unavailable, then Bank will act as trustee, unless Settlers, acting jointly, or the survivor of them, within (30) days following the resignation, refusal or inability of Bank to act as trustee, designate another individual trustee, or another successor corporate trustee. In making such designation of a successor individual trustee, Settlers or the survivor of them, may not designate a "related or subordinate party" as such term is defined in § 672(c). In designating a successor corporate trustee, Settlers, or the survivor of them, may only designate a corporate trustee having a combined capital and surplus of at least twenty million dollars.

Currently, Article VIII, paragraph A, of Trust provides that so long as either of the Settlers is living, the net income of Trust is to be divided into as many equal shares as there are children of Settlers then living and children of Settlers then deceased but leaving issue then living. The trustee is to allocate one such share for the benefit of each such child then living, and one such share for the benefit of each group composed of the living issue of a deceased child of Settlers to be subdivided into separate equal shares for each member of such group. The trustee shall pay to or apply for the benefit of each beneficiary, that beneficiary's share of net income, quarter-annually or at more convenient intervals. In addition, the trustee may pay to or apply for the benefit of a beneficiary as much of the principal of Trust as the trustee deems necessary for the proper and reasonable support, health, maintenance and education of a beneficiary, considering other resources of the beneficiary. The trustee may pay more or apply more for some beneficiaries than others. Any such payments will be charged against the trust estate as a whole rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made.

Article VIII, paragraph B, provides that at the later of the death of the survivor of the Settlers or the attainment of the age of twenty-one years of all of Settlers' living children, or upon the death of all of Settlers' children prior to the youngest child attaining age twenty-one, the trustee is to divide the Trust estate into as many equal shares as there are children of Settlers then living and children of Settlers then deceased leaving living issue. The trustee is to allocate one equal share to each living child of Settlers and one equal share to each group composed of the living issue of a deceased child of Settlers to be further allocated in subshares among such issue. Each such share or subshare is to be treated as a separate trust.

The net income of each new trust is to be distributed for the benefit of the respective beneficiary during his or her life. If the beneficiary has not reached the age of twenty-one, then the trustee will continue to hold the trust income in trust and the trustee may use or apply net income and principal as the trustee deems necessary for reasonable education, care and support of the beneficiary. Any accumulated income is to be added to principal until the beneficiary attains the age of twenty-one, at which time

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the beneficiary will be entitled to the net income.

One-third of the principal is to be distributed when a beneficiary attains the age of 25, one-half of the balance of the principal is to be distributed when a beneficiary reaches the age of 30, and the remaining principal is to be distributed when a beneficiary is age 40.

Upon the death of a beneficiary, the trustee will distribute the beneficiary's share free of trust to or for the use and benefit of such beneficiary's issue under such terms and conditions as the beneficiary appoints by will. If a beneficiary does not exercise this power of appointment, the undistributed balance of the beneficiary's trust will be apportioned into separate trusts for such deceased beneficiary's then living lawful issue, and if there are no such living issue, such trust will be apportioned among the other beneficiaries.

Unless sooner terminated, each trust will terminate 21 years after the death of the survivor of Settlers and Settlers' issue living at the date of the execution of Trust or upon the earlier death of Settlers and all of their issue. Upon termination the entire corpus and any undistributed income of each trust is to be distributed to the beneficiary of that trust. If there is no beneficiary then living, then the assets are to be distributed one-half to the heirs at law of Settlor 1 and one-half to the heirs at law of Settlor 2 according to the laws of State. The current beneficiaries of Trust are Daughter 1 and Daughter 2.

You propose to modify Trust. Pursuant to the modification, Trust will be divided into two equal trusts pursuant to a court order. Trust 1 will be for the benefit of Daughter 1 and Trust 2 will be for the benefit of Daughter 2.

The terms of Trust 1 and Trust 2 will be identical. Under the terms of the modification, Article VIII, paragraph A. 2. of Trust 1 and Trust 2 provides for the mandatory distribution of income to the beneficiary of trusts, at least annually. If the trustee deems the net income to be insufficient, the trustee may pay to or apply for the benefit of the beneficiary, as much of the principal of the trust, as trustee deems necessary for the proper and reasonable support, health, maintenance and education of the beneficiary taking into consideration other resources of the beneficiary.

If the beneficiary of a trust is a daughter of Settlers, and if the trust held for the principal benefit of a sister (or for such sister's issue, if the sister is deceased) has been substantially exhausted and if the trustee deems the net income payable to such sister (or to any one or more of such issue) to be insufficient, the trustee may pay to or apply for the benefit of such sister (or to any one or more of such issue) as much of the principal of the daughter's trust as the trustee, in his discretion, deems necessary for the proper and reasonable support, health, maintenance and education of such sister, taking into consideration any other resources of such sister.

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If a beneficiary of Trust 1 or Trust 2 dies with living issue, the trustee will divide the beneficiary's trust into as many equal shares as there are children of the deceased beneficiary then living and deceased children leaving issue then living of the deceased beneficiary. The trustee will allocate one equal share to each living child of the deceased beneficiary and one share to each group composed of the living issue of a deceased child of the deceased beneficiary to be allocated in subshares among such issue in the same manner. Each share or subshare will be treated as a separate trust which will be held and administered as provided in this paragraph, and the beneficiary thereof will augment proportionately the trusts for Settlor's then living issue who are also the issue of the beneficiary's closest lineal ancestor who has issue of the Settlor's then living.

Upon the death of the survivor of the Settlor's, each trust will be distributed, or retained in trust, as hereinafter provided.

Article VI, as modified, provides that Daughter 1 and Trustee 2 will be the trustees of Trust 1 and Daughter 2 and Trustee 2 will be the trustees of Trust 2. Upon the death of Settlor 1, Trustee 3 will become co-trustee of both trusts. If a trust is held for a beneficiary who is one of the issue of a deceased daughter of Settlor's, then Trustee 2 shall serve as trustee. Upon the death of Settlor 1 or if Trustee 2 is unable or unwilling to serve, Trustee 3 will become a co-trustee.

Article VI, as modified also provides that if Daughter 1 or Daughter 2 is unable to continue serving as co-trustee, then no successor trustee shall be appointed for such daughter, but instead the number of trustees will be reduced accordingly. Trustee 2, Trustee 3 and the successors to either of them will have the power to designate by written instrument filed with the court one or a series of successors to serve when such trustee shall be unable to continue serving. If such trustee shall fail to do so, the remaining trustees shall name a successor to such person so that the number of trustees serving will not be reduced. Any disagreement among trustees will be decided by a majority vote.

You request a ruling that the proposed modification of Trust pursuant to a court order will not result in a loss of Trust's exempt status for GST tax purposes.

You represent that Trust was created before September 25, 1985, and that there have been no additions to Trust after that date.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 1433(b)(2)(A) of the 1986 Act and § 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 September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income

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attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(1)(ii) (B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust, which is excluded from the application of chapter 13 by § 1433(b)(2)(A) of the 1986 Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraphs (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, but only if –

(1) 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

(2) 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.

In this case, Trust was created and irrevocable before September 25, 1985. Also, it is represented that no additions have been made to Trust since September 25, 1985. Consequently, Trust is currently exempt from GST tax.

The proposed division of Trust into two trusts does not shift any beneficial interest in Trust to a beneficiary who occupies a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the proposed division of Trust does not extend the time for vesting of any beneficial interest in Trust 1 and Trust 2 beyond the period provided for in the original trust. Further, the modification will not result in a deemed contribution to Trust 1 or Trust 2. Accordingly, based on the facts submitted and the representations made, the two trusts resulting from the division of Trust will be treated for GST tax purposes as Trust and will not be subject to the provisions of chapter 13.

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

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In accordance with the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

This 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 yours,
Lorraine E. Gardner
Assistant to Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for 6110 purposes

cc: