

## Internal Revenue Service

## Department of the Treasury

Number: **200306027**  
Release Date: 02/7/2003  
Index Number: 2601.03-01

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-125529-02

Date:

November 1, 2002

Re:

### Legend:

Decedent =

Trust =

Executive Trustee 1 =

Executive Trustee 2 =

Trustee A =

Executive Trustee 3 =

Executive Trustee 4 =

Trustee B =

Date 1 =

Date 2 =

X =

Corporation =

Court =

Dear :

This is in response to your letter dated April 19, 2002, in which you requested a ruling under § 2601 of the Internal Revenue Code.

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The facts submitted and representations made are as follows: Decedent created an irrevocable inter vivos trust (Trust) on Date 1 with Executive Trustee 1, Executive Trustee 2, and Trustee A as initial co-trustees. Executive Trustee 1 and Executive Trustee 2 were officers of Corporation. The current co-trustees of Trust are Executive Trustee 3 and Executive Trustee 4, who are officers of Corporation, and Trustee B. Trust was funded on Date 1, with x shares of common stock of Corporation. You represent that there have been no modifications or amendments to Trust, and that there have been no additions to Trust on or after September 25, 1985.

Article Two of Trust provides that the trustees shall, until Date 2, or until the death of the last to survive of Decedent's six children and eleven grandchildren, whichever shall occur first, pay the entire net income each year to and among such educational, religious, or charitable organizations as are described in §§ 501(c)(3), 170(c) and 2522(a) of the Internal Revenue Code as the trustees in their absolute discretion may select and in such amounts as they may determine.

Article Three, Section A, provides that no distribution of Trust property shall be made until Date 2, or until the death of the last to survive of Decedent's six children and eleven grandchildren, whichever shall occur first.

Article Three, Section B, provides that on Date 2, if at that time there shall still be living one or more of the six children and eleven grandchildren of Decedent, the trustees shall divide the trust property into as many equal shares as there shall be then living children of the Decedent's six children, or children of the six children of Decedent who died leaving issue who are then living, one such equal share for the issue collectively of each such deceased child of the six children; and to pay over, absolutely and outright, and forever, each such share so set apart for the issue collectively of a deceased child of the six children to the issue in equal shares, per stirpes; and to hold each such share so set apart for the benefit of a surviving child of the children in a separate trust. The trustees of the trusts may pay to the child for whom the trust was created, the parent or guardian of the child, or the spouse and issue of the child, so much of the net income in any year as the trustees in their absolute discretion deem to be in the best interests of the child for whom the trust was created. Trustees may also, whenever they deem it to be in the best interest of the child for whom the trust was created, pay to the child, their parent or guardian, or their spouse and issue, any or all of the trust property.

Article Three, Section B, Subsection (iii) provides that, upon the death of the child for whom each trust was created, the trustees shall pay over, absolutely, the then remaining trust property to and among the spouse, issue, and brothers and sisters of such child, in such shares as the child may direct in his last will and testament, or failing such testamentary direction, then to the issue of such child, in equal shares, per stirpes.

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Article Three, Section C, provides that upon the death of the last to survive of the six children and eleven grandchildren of Decedent, in termination of all of the trusts that created under Trust that have not then already been terminated under their own terms: (i) if such death occurs on or before Date 2, trustees shall divide the trust property into as many equal shares as there shall be then living children of Decedent's six children, or children of the six children who died leaving issue who are then living, and pay over, absolutely, outright and forever, one of such equal shares to each child then living, and one to the issue, per stirpes, then living of each deceased child of the six children of Decedent; (2) if such death occurs after Date 2, trustees shall transfer and pay over absolutely, outright, and forever, the trust property in each separate trust as shall then still be in existence to the child of those children of Decedent for whose benefit the separate trust was established.

Article Nine states that Decedent "expresses a preference that there be three (3) trustees serving hereunder." Article Nine further provides that Executive Trustee 1 and Executive Trustee 2, and each of their successor trustees, shall serve as trustees only so long as they hold their executive positions with Corporation. When they, for any reason, cease to hold their executive positions with Corporation, they shall resign. If, for any reason, Executive Trustee 1 or Executive Trustee 2 shall cease to serve as trustees, then the successor trustee of each such trustee shall be appointed in the following order of preference: (1) Chairman of the Board of Directors of Corporation, (2) Vice Chairman of the Board of Directors of Corporation, who has continuously held that office for the longest period of time, (3) Chairman of the Executive Committee of Corporation, (4) Vice Chairman of the Executive Committee of Corporation who has continuously held that position for the longest period of time, (5) some other executive of Corporation appointed by a vote of the majority of members of the Board of Directors of Corporation then in office.

Article Fourteen provides that the Trust is irrevocable.

The executive trustees have instituted a proceeding in Court, requesting that the Trust be modified to allow for, as deemed to be necessary and in the best interests of Trust by the then existing executive trustees, three Corporation senior executives to serve as co-trustees along with Trustee B or his successor.

The executive trustees of trust have requested a ruling that the proposed judicial modification of Trust to allow for, as deemed to be necessary and in the best interests of Trust by the then existing executive trustees, three Corporation senior executives to serve as co-trustees along with Trustee B or his successor will not result in the loss of Trust's "grandfathered" status from generation skipping transfer tax.

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## LAW AND ANALYSIS

Section 2601 imposes a tax on each generation-skipping transfer made by a transferor to a skip person.

Under Section 1433(a) of the Tax Reform Act of 1986, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986.

Section 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the generation-skipping transfer (GST) tax shall not apply to any generation-skipping transfer from 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 attributable to corpus so added).

Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under § 2038 or § 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i), provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action will not cause a trust that was irrevocable on September 25, 1985, to lose its exempt status.

Under Section 26.2601-1(b)(4)(i)(D)(1) a modification will not cause a trust that was irrevocable on September 25, 1985, 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 § 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 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. To determine whether a particular amendment to a trust shifts a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification.

Section 26.2601-1(b)(4)(i)(E), Example 10, involves an irrevocable trust for the benefit of the grantor's issue, which names a bank and five other individuals as trustees. The appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative expenses. The example concludes that the modification pertains to the administration of the trust

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and that the trust will not be subject to the provisions of Chapter 13 of the Internal Revenue Code.

In this case, Trust currently has three trustees. Two of the trustees are senior executives of Corporation, and under the terms of Trust, these trustees are to be succeeded only by individuals who are executives of Corporation. The executive trustees have requested that Court modify the terms of Trust in a manner that would allow for three senior executives of Corporation to serve as trustees of Trust along with Trustee B or his successor. This modification pertains to the administration of the Trust, and therefore, if the terms of Trust modified in the manner discussed above, the modification would 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. In addition, 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. Therefore, we conclude that the modification will not result in the loss of Trust's "grandfathered" status from generation skipping transfer tax.

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

James F. Hogan

James F. Hogan  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

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