

Internal Revenue Service

Department of the Treasury

Number: **200324051**
Release Date: 6/13/2003
Index Number: 61.00-00; 1001.00-00;
1015.03-00; 1223.01-00; 2601.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-127427-02
Date:
March 7, 2003

Re:

LEGEND

- Father =
- Date 1 =
- State =
- Trust 1 =

- Son =
- Mother =
- Date 2 =
- Trust 2 =

- Date 3 =
- Wife =

- Child 1 =

- Child 2 =

- Child 3 =

- Probate Court =
- Date 4 =

PLR-127427-02

Bank =

Dear :

This is in response to your letter of May 8, 2002, in which you request a ruling on the application of the income, gift, estate and generation-skipping transfer ("GST") tax consequences of the proposed division and merger of two trusts.

Father died on Date 1, a resident of State. Trust 1 was created for the benefit of Son under Father's last will and testament. Article VI of Father's will sets forth the terms of Trust 1.

Article VI, Paragraph A of Father's will provides that the net income of Trust 1 may be accumulated or may be distributed to Son in such amounts as the trustee, in its sole discretion may determine. Any net income not distributed to Son shall be added to principal. In addition, the trustee is authorized to distribute to Son such amounts of principal as the trustee shall determine necessary for the support, maintenance or medical care of Son.

Article VI, Paragraph D provides that upon Son's death, the trustee shall distribute the entire principal, including any undistributed income, of Trust 1 in such proportions and in such manner, outright or in trust or otherwise, to or for the benefit of any one or more persons or corporations as Son may appoint by his last will and testament except that Son shall have no power to appoint the corpus of the trust or any part thereof to himself, his estate, his creditors or the creditors of his estate.

Mother died on Date 2, a resident of State. Trust 2 was created for the benefit of Son under Mother's last will and testament. Article VI of Mother's will sets forth the terms of Trust 2.

Article VI, Paragraph A of Mother's will provides that the net income of Trust 2 may be accumulated or may be distributed to Son in such amounts as the trustee, in its sole discretion may determine. Any net income not distributed to Son shall be added to principal. In addition, the trustee is authorized to distribute to Son such amounts of principal as the trustee shall determine necessary for the support, maintenance or medical care of Son.

Article VI, Paragraph D provides that upon Son's death, the trustee shall distribute the entire principal, including any undistributed income, of Trust 2 in such proportions and in such manner, outright or in trust or otherwise, to or for the benefit of any one or more persons or corporations as Son may appoint by his last will and testament except that Son shall have no power to appoint the corpus of the trust or any part thereof to himself, his estate, his creditors or the creditors of his estate.

PLR-127427-02

Son died on Date 3 survived by Wife, Child 1, Child 2, Child 3 and more remote descendants. Father is the paternal grandfather of Child 1, Child 2, and Child 3. Mother is the paternal grandmother of Child 1, Child 2, and Child 3.

Son's last will and testament was admitted to probate by Probate Court on Date 4. In Section XII of his will, Son exercised his testamentary special power of appointment over the assets of Trust 1.

Section XII, Paragraph B of Son's will provides that the trustee shall divide the principal and undistributed income of Trust 1 into equal shares for Child 1, Child 2, and Child 3. Each share shall be held as a separate and distinct trust and shall be designated by the name of the child who is the beneficiary thereof.

Section XII, Paragraph C provides that during Wife's lifetime, the trustee shall distribute so much or all of the net income of the trusts created for Child 1, Child 2, and Child 3 as the trustee shall deem appropriate for Wife's maintenance, support and medical care. Such distributions shall be made in proportionate shares from the trusts created for Child 1, Child 2, and Child 3. In addition, the trustee shall distribute so much of the income of each child's trust to the child for whom the trust is created as the trustee deems appropriate for the education, maintenance, support, and medical care of such child. Any net income not distributed shall be accumulated and shall be added to the corpus of the trust.

Section XII, Paragraph D provides that if at any time the net income of the trusts for Child 1, Child 2, and Child 3, together with such other property as may be available for such purpose, shall not be adequate in the opinion of the trustee for the medical care of Wife or the support of Wife in her accustomed manner of living, the trustee may supplement same with corpus to the extent of exhausting the trusts. Such distributions shall be made in proportionate shares from the trusts created for Child 1, Child 2, and Child 3. In addition, if at any time the net income of the trusts for Child 1, Child 2, and Child 3, together with such other property as may be available for such purpose, shall not be adequate in the opinion of the trustee for the education, maintenance, support, and medical care of the child for whom the trust is created, as well as such child's spouse and descendants, the trustee may supplement same with corpus to the extent of exhausting the trust.

Section XII, Paragraph E provides that upon the death of the survivor of Wife, the child for whose benefit each trust is created, and such child's spouse, the respective trust for such child shall terminate and the trustee shall distribute the assets and properties then comprising the trust to such child's then living descendants, free of trust, subject to the postponements described in Section XII, Paragraph F; provided, however, that if any such descendant is a beneficiary of any other trust created for the benefit of Child 1, Child 2, or Child 3, the property otherwise to be delivered to him shall be added to the property being held in such trust and shall thereafter be governed by the terms thereof.

PLR-127427-02

Section XII, Paragraph F provides that if upon the termination of a trust for the benefit of Child 1, Child 2, or Child 3 or a trust created under this paragraph, any person to whom property would otherwise be delivered shall not have attained the age of thirty (30) years and shall not already be a beneficiary of a trust hereunder, the property otherwise to be delivered to such person shall not be delivered to him, but instead shall be retained in trust as a separate and distinct trust for his benefit. Upon such beneficiary's attainment of the age of thirty (30) years, the trust shall terminate and the trustee shall deliver to him, free of trust, the assets then comprising his trust.

Section XII, Paragraph G provides that notwithstanding anything in the will to the contrary, each trust created for the benefit of Child 1, Child 2, and Child 3, as well as any trust created for the benefit of a beneficiary under the age of thirty (30) years, shall in all events terminate not later than twenty-one (21) years from and after the death of the last survivor of the lineal descendants of Father living on the date of his death. Upon such termination, the assets and properties then comprising any trust then existing shall be delivered in fee simple and free of trust unto that person or those persons who at the time of such termination constitutes or constitute the income beneficiary or beneficiaries of such trust estate.

Similarly, Son exercised his testamentary special power of appointment over the assets of Trust 2 in Section XIII of Son's will.

Section XIII, Paragraph B provides that the trustee shall divide the principal and undistributed income of Trust 2 into equal shares for Child 1, Child 2, and Child 3. Each share shall be held as a separate and distinct trust and shall be designated by the name of the child who is the beneficiary thereof.

Section XIII, Paragraph C provides that during Wife's lifetime, the trustee shall distribute so much or all of the net income of the trusts created for Child 1, Child 2, and Child 3 as the trustee shall deem appropriate for Wife's maintenance, support and medical care. Such distributions shall be made in proportionate shares from the trusts created for Child 1, Child 2, and Child 3. In addition, the trustee shall distribute so much of the income of each child's trust to the child for whom the trust is created as the trustee deems appropriate for the education, maintenance, support, and medical care of such child. Any net income not distributed shall be accumulated and shall be added to the corpus of the trust.

Section XIII, Paragraph D provides that if at any time the net income of the trusts for Child 1, Child 2, and Child 3, together with such other property as may be available for such purpose, shall not be adequate in the opinion of the trustee for the medical care of Wife or the support of Wife in her accustomed manner of living, the trustee may supplement same with corpus to the extent of exhausting the trusts. Such distributions shall be made in proportionate shares from the trusts created for Child 1, Child 2, and Child 3. In addition, if at any time the net income of the trusts for Child 1, Child 2, and Child 3, together with such other property as may be available for such purpose, shall not be adequate in the opinion of the trustee for the education, maintenance, support,

PLR-127427-02

and medical care of the child for whom the trust is created, as well as such child's spouse and descendants, the trustee may supplement same with corpus to the extent of exhausting the trust.

Section XIII, Paragraph E provides that upon the death of the survivor of Wife, the child for whose benefit each trust is created, and such child's spouse, the respective trust for such child shall terminate and the trustee shall distribute the assets and properties then comprising the trust to such child's then living descendants, free of trust, subject to the postponements described in Section XII, Paragraph F; provided, however, that if any such descendant is a beneficiary of any other trust created for the benefit of Child 1, Child 2, or Child 3, the property otherwise to be delivered to him shall be added to the property being held in such trust and shall thereafter be governed by the terms thereof.

Section XIII, Paragraph F provides that if upon the termination of a trust for the benefit of Child 1, Child 2, or Child 3 or a trust created under this paragraph, any person to whom property would otherwise be delivered shall not have attained the age of thirty (30) years and shall not already be a beneficiary of a trust hereunder, the property otherwise to be delivered to such person shall not be delivered to him, but instead shall be retained in trust as a separate and distinct trust for his benefit. Upon such beneficiary's attainment of the age of thirty (30) years, the trust shall terminate and the trustee shall deliver to him, free of trust, the assets then comprising his trust.

Section XIII, Paragraph G provides that notwithstanding anything in the will to the contrary, each trust created for the benefit of Child 1, Child 2, and Child 3, as well as any trust created for the benefit of a beneficiary under the age of thirty (30) years, shall in all events terminate not later than twenty-one (21) years from and after the death of the last survivor of the lineal descendants of Mother living on the date of her death. Upon such termination, the assets and properties then comprising any trust then existing shall be delivered in fee simple and free of trust unto that person or those persons who at the time of such termination constitutes or constitute the income beneficiary or beneficiaries of such trust estate.

Bank, in its capacity as trustee of Trust 1, proposes to divide Trust 1 into three (3) trusts, one for each of Child 1, Child 2, and Child 3 (collectively, "New Trusts 1"), with each of the new trusts receiving an undivided one-third (1/3) of the assets of Trust 1. Each of the new trusts will have terms identical to those governing Trust 1, except that the new trusts will be reformed to terminate upon the earlier of (i) the date of the last to die of Wife, the child for whom the trust is created and the spouse to whom such child was married at the date of Son's death; or (ii) the date twenty-one (21) years after the death of the last survivor of Father's descendants who were living at Father's death. The proposed division will be made pursuant to an appropriate judicial proceeding in a State district court of proper jurisdiction.

Bank, in its capacity as trustee of Trust 2, proposes to divide Trust 2 into three (3) trusts, one for each of Child 1, Child 2, and Child 3 (collectively, "New Trusts 2"),

PLR-127427-02

with each of the new trusts receiving an undivided one-third (1/3) of the assets of Trust 2. Each of the new trusts will have terms identical to those governing Trust 2, except that the perpetuities provision of the new trusts will be reformed so that each trust will terminate upon the earlier of (i) the date of the last to die of Wife, the child for whom the trust is created and the spouse to whom such child was married at the date of Son's death; or (ii) the date twenty-one (21) years after the death of the last survivor of Father's descendants who were living at Father's death. The proposed division will be made pursuant to an appropriate judicial proceeding in a State district court of proper jurisdiction.

In the same judicial proceeding that will be brought in State district court to divide Trust 1 and Trust 2, Bank proposes to merge the six (6) new trusts resulting from the division of Trust 1 and Trust 2 as follows: the two new trusts for the benefit of Child 1 will be merged into a single trust for the benefit of Child 1, known as Child 1's GST-Exempt Trust; the two new trusts for the benefit of Child 2 will be merged into a single trust for the benefit of Child 2, known as Child 2's GST-Exempt Trust; and the two new trusts for the benefit of Child 3 will be merged into a single trust for the benefit of Child 3, known as Child 3's GST-Exempt Trust. The merged trusts will be known collectively as the "GST-Exempt Trusts." If not sooner terminated, all of the GST-Exempt Trusts will terminate twenty-one years after the death of the last survivor of Father's descendants who were living at the time of Father's death on Date 1.

Wife, Child 1, Child 2, and Child 3 will consent to the proposed transactions. Bank further represents that Trust 1 and Trust 2 are irrevocable and that no additions have been made to Trust 1 or Trust 2 since their creation.

You now request the following rulings on behalf of Bank:

1. The proposed transactions will not cause the interest of any beneficiary of Trust 1, Trust 2, New Trusts 1, New Trusts 2, or GST-Exempt Trusts to be includible in such beneficiary's gross estate under § 2033 of the Code.
2. The proposed transactions will not cause the interest of any beneficiary of Trust 1, Trust 2, New Trusts 1, New Trusts 2, or GST-Exempt Trusts to be includible in such beneficiary's gross estate under §§ 2036 through 2038.
3. Each of Trust 1, Trust 2, New Trusts 1, New Trusts 2, and GST-Exempt Trusts will be treated as a trust that was irrevocable on September 25, 1985, and will remain exempt from the GST tax and that no constructive or actual addition to any of Trust 1, Trust 2, New Trusts 1, New Trusts 2, or GST-Exempt Trusts will result from the proposed transactions.
4. Transfers to New Trusts 1, New Trusts 2, and GST-Exempt Trusts pursuant to the proposed transactions will not be generation-skipping transfers and will not be subject to tax under § 2601.

PLR-127427-02

5. The proposed transactions will not cause Trust 1, Trust 2, New Trusts 1, New Trusts 2, GST-Exempt Trusts or any beneficiary to recognize gain or loss from the sale or other disposition of property under § 61 or § 1001.
6. Pursuant to § 1223(2), the holding period for each of New Trusts 1, New Trusts 2, and GST-Exempt Trusts in each asset received from Trust 1 and/or Trust 2 will include the respective holding period of Trust 1 or Trust 2 for each such asset.
7. Pursuant to § 1015, the basis for each of New Trusts 1, New Trusts 2, GST-Exempt Trusts in each asset received from Trust 1 and/or Trust 2 will be the respective basis of Trust 1 or Trust 2 for each such asset.
8. The exercise of the special testamentary power of appointment by Son over the assets in Trust 1 did not result in a transfer subject to the GST tax and New Trusts 1 continue to be exempt from the GST tax. The exercise of the special testamentary power of appointment by Son over the assets in Trust 2 did not result in a transfer subject to the GST tax and New Trusts 2 continue to be exempt from the GST tax.

Rulings 1 and 2

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

In this case, following the proposed division of Trust 1 and Trust 2 into New Trusts 1 and New Trusts 2, and the subsequent merger of the individual trusts comprising New Trusts 1 and New Trusts 2 into GST-Exempt Trusts, Wife, Child 1, Child 2, and Child 3 will have the same rights with respect to the particular Child GST-Exempt Trust as each had under prior to the transaction.

Accordingly, we conclude that the proposed division of Trust 1 and Trust 2 into New Trusts 1 and New Trusts 2, and the subsequent merger of the individual trusts comprising New Trusts 1 and New Trusts 2 into GST-Exempt Trusts, will not cause the interest of any beneficiary of Trust 1, Trust 2, New Trusts 1, New Trusts 2, or GST-Exempt Trusts to be includible in such beneficiary's gross estate under § 2033.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has

PLR-127427-02

retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2037(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, revoke or terminate, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death.

In order for §§ 2036-2038 to apply, the decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. In the present case, the beneficiaries of New Trusts 1, New Trusts 2, and GST-Exempt Trusts will have the same interest that they had as beneficiaries under Trust 1 and Trust 2.

Thus, the proposed division of Trust 1 and Trust 2 into New Trusts 1 and New Trusts 2, and the subsequent merger of the individual trusts comprising New Trusts 1 and New Trusts 2 into GST-Exempt Trusts will not constitute a transfer within the meaning of §§ 2036-2038. We therefore conclude that the proposed transaction will not cause the interest of a beneficiary of Trust 1, Trust 2, New Trusts 1, New Trusts 2, or GST-Exempt Trusts to be includible in such beneficiary's gross estate under §§ 2036-2038.

Rulings 3 and 4

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

PLR-127427-02

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 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 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) provides rules for determining when 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. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes.

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 subsection) 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 1 and Trust 2 were created and irrevocable before September 25, 1985. Also, it is represented that no additions have been made to Trust 1 or Trust 2 since September 25, 1985. Consequently, Trust 1 and Trust 2 are currently exempt from the GST tax.

The proposed division of Trust 1 and Trust 2 into New Trusts 1 and New Trusts 2, and the subsequent merger of the individual trusts comprising New Trusts 1 and New Trusts 2 into GST-Exempt Trusts will not shift any beneficial interest in Trust 1

PLR-127427-02

or Trust 2 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 and merger. In addition, the proposed transaction will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts. Further, the division and merger will not result in an actual or constructive addition to New Trusts 1, New Trusts 2, or GST-Exempt Trusts.

Accordingly, based on the facts submitted and the representations made, the transfers to New Trusts 1, New Trusts 2, and GST-Exempt Trusts will not be generation-skipping transfers and will not be subject to tax under § 2601. Rulings 5, 6 and 7

Section 61 provides that gross income includes all income from whatever source derived. Section 61(a)(3) specifically includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 over the amount realized. Section 1001(c) provides that, except as otherwise provided in Subtitle A, the entire amount of gain or loss determined under § 1001 on the sale or other exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides, as a general rule, 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. For purposes of § 1001, in an exchange of property, each party to the exchange gives up a property interest in return for a new or additional interest. Such an exchange is a disposition under § 1001(a).

An exchange of property results in the realization of gain only if the properties exchanged materially differ. Cottage Savings Association v. Commissioner, 499 U.S. 554 (1991). A material difference exists when the exchanged properties embody legal entitlements “different in kind or extent” or if they confer “different rights and powers.” Id. at 565.

In the present case, the information submitted and the representations made in the ruling request establish that Trust 1, Trust 2 and the principal of those trusts will be “reallocated” essentially for administrative convenience. The primary beneficiaries as well as subsequent beneficiaries will possess the same income and remainder interests before and after the proposed division and merger. Consequently, since the interests of the beneficiaries under New Trusts 1, New Trusts 2, and GST-Exempt Trusts will not materially differ from their interests under Trust 1 and Trust 2, no gain or loss will be realized under §§ 61 and 1001.

PLR-127427-02

Section 1015 provides that the basis in property acquired by a transfer in trust is the same as it would be in the hands of the grantor, with adjustments for gain and loss recognized.

Section 1.1015-2(a)(1) provides that, in the case of property acquired after December 31, 1920, by transfer in trust, (other than by a transfer in trust by gift, bequest or devise), the basis of property so acquired is the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer is made.

Section 1.1015-2(a)(2) provides that the principles in § 1.1015-1(b) concerning the uniform basis are applicable in determining the basis of property where more than one person acquires an interest in property by transfer in trust.

Section 1.1015-1(b) provides that property acquired by gift has a single or uniform basis although more than one person may acquire an interest in the property. The uniform basis of the property remains fixed subject to proper adjustment for items under §§ 1016 and 1017.

In this case, because neither § 1001 nor § 61 applies to the proposed transaction, the basis of the assets for each of New Trusts 1, New Trusts 2, and GST-Exempt Trusts will be the same as the basis of the assets in Trust 1 and Trust 2.

Section 1223(2) states that in determining the period for which the taxpayer has held property however acquired there shall be included the period for which the property was held by another person, if under chapter 1 the property has, for the purpose of determining gain or loss from an exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of the other person.

We conclude that under § 1223(2), the holding period for each of New Trusts 1, New Trusts 2, and GST-Exempt Trusts in each asset received from Trust 1 and/or Trust 2 will include the respective holding period of Trust 1 or Trust 2 for each such asset.

Rulings 8 and 9

Section 2041(b)(1) provides that the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1)(b) provides that a power is not a general power of appointment if by its terms it is expressly not exercisable in favor of the decedent or his or her creditors or the creditors of his or her estate.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided in § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the post-

PLR-127427-02

September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if -- (1) such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b)(1); and (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting of absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of § 26.2601-1(b)(1)(v)(B)(2), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of the creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period. If a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power is exercised.

In the present case, Son held special testamentary powers to appoint the trust property of Trust 1 and Trust 2. Both Trust 1 and Trust 2 were irrevocable on September 25, 1985. Son's exercise of these special powers of appointment will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest in trust property for a period beyond the perpetuities periods of Trust 1 and Trust 2. Therefore, Son's testamentary exercise of the special powers of appointment under Trust 1 and Trust 2 will not be treated as constructive additions that will be subject to the generation-skipping transfer tax.

Based on the foregoing, we conclude that Son's exercise of the special power of appointment over the assets in Trust 1 did not result in a transfer subject to the generation-skipping transfer tax and New Trusts 1 continue to be exempt from the generation-skipping transfer tax. Likewise, Son's exercise of the special power of appointment over the assets in Trust 2 did not result in a transfer subject to the generation-skipping transfer tax and New Trusts 2 continue to be exempt from the generation-skipping transfer tax.

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

PLR-127427-02

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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. In addition, each of the rulings contained in this letter is contingent upon approval of the proposed transactions by a State district court of proper jurisdiction (provided that said judicial approval is in accordance with State law).

Sincerely,

James F. Hogan

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

Enclosure

Copy for 6110 purposes