

Internal Revenue Service

Department of the Treasury
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PLR-118874-07
Date:
September 12, 2008

Re:

Legend

Settlors =
Trust =

Child 1 =
Child 2 =
Child 3 =
Child 4 =
Spouse 1 =
Spouse 2 =
Spouse 3 =
Spouse 4 =
Trustee =
Date =
State =
State Statute #1 =
State Statute #2 =
State Statute #3 =
State Statute #4 =

Dear _____ :

This is in response to a letter dated April 6, 2007, and subsequent correspondence, from you and your authorized representative, in which you request gift and generation-skipping transfer (GST) tax rulings with respect to certain proposed disclaimers.

FACTS

Settlors, husband and wife, have four children, Child 1, Child 2, Child 3, and Child 4. Settlor created an irrevocable trust, Trust, on Date. Part II, §§ A.2 and A.3 of Trust provide that, during the lives of the Settlor, the Trustee shall pay to or for the benefit of Settlor's Children so much of Trust's income and principal as shall be necessary to support and maintain Settlor's Children pursuant to a standard set forth in § A.5. Section A.3 provides that, upon the death of the second Settlor to die, and after certain specific bequests to Settlor's grandchildren and the spouses of Settlor's Children named in Trust ("Named Spouses"), the balance of Trust is to be divided into one separate share for each of the Settlor's children then living. If a Child of the Settlor predeceases the Settlor and is not survived by a Named Spouse or the Named Spouse is no longer married to the Child, but is survived by issue, the issue of the Settlor's predeceased Child receive the Child's share. If the Settlor's predeceased Child, is survived by the Child's Named Spouse along with the Child's then living children, each receives a specified portion of the Child's share. If the Settlor's predeceased Child is survived by a Named Spouse, but no issue then living, the Named Spouse receives the Child's share. The Named Spouses in Trust are Spouse 1, Spouse 2, Spouse 3, and Spouse 4.

Settlors have made annual contributions of cash to Trust. Pursuant to Part I, § C of Trust, the Trustee has given written notices to the beneficiaries of a right to withdraw contributions from Trust. To date, the Trustee has not distributed any Trust income or principal to Settlor's Children.

Each of Settlor's Children proposes to execute a non-qualified disclaimer of his or her entire interest, present and future, in Trust. Each Named Spouse of a Child also proposes to execute a non-qualified disclaimer of his or her entire interest, which is a future interest. Settlor's Children and the Named Spouse of a Child will hereafter be referred to collectively as Disclaimants. Each Disclaimant represents that he or she has not exercised dominion or control over any interest in Trust, nor have they received or accepted any rights, titles, power or interests in or benefits under Trust. Each Disclaimant is over the age of 21.

Under State Statute #1, "property" means anything that may be the subject of ownership, and includes both real and personal property and an interest in property, including a present interest and a future interest.

State Statute #2 provides that a disclaimer may be of a specific asset, an interest in a specific asset, a pecuniary amount, a fractional or percentage share, or a limited interest or estate.

State Statute #3 provides that a disclaimer is not valid unless it (a) is in writing, (b) declares the disclaimer, (c) describes the disclaimed interest, (d) is signed by the disclaimant, and (e) is delivered as provided in State statutes.

State Statute #4 provides that a future interest that takes effect in possession or enjoyment upon the termination of a disclaimed interest takes effect as if the disclaimant had predeceased the decedent. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

The following rulings have been requested:

1. The non-qualified disclaimer by a Child of Settlers or a Named Spouse of a Child of Settlers of his or her entire interest in Trust will cause a taxable gift to be made to Trust by such disclaimant for federal gift tax purposes.

2. As a result of the non-qualified disclaimer, each disclaiming Child or a Named Spouse of a Child will be treated as the transferor to the extent of the gift both for purposes of the federal gift tax under chapter 12 and the federal GST tax under chapter 13.

3. As a result of a taxable termination occurring upon the execution of a non-qualified disclaimer by a Child of Settlers or a Named Spouse, Trust will be subject to GST tax under chapter 13, but only as to the interest(s) held by the grandchildren of Settlers at the time of the disclaimers.

4. After the occurrence of a non-qualified disclaimer by Settlers' Child or a Named Spouse and a taxable termination as provided in ruling request number 3, neither Trust nor the skip persons who are beneficiaries of Trust will be subject to further GST tax upon any future distributions to the skip persons from Trust because (a) Settlor's Child or a Named Spouse will be treated for purposes of chapter 13 as the "transferor" as to the interest of Settlor's Child or a Named Spouse and/or (b) because a taxable termination will have occur with respect to the interests of the skip persons upon the disclaimers.

LAW AND ANALYSIS:

Ruling Request 1- Gift Tax

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate and gift tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if --

(1) the refusal is in writing,

(2) the writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date that is 9 months after the later of --

(A) the date on which the transfer creating the interest in the person is made, or

(B) the day on which the person attains age 21,

(3) the person disclaiming the interest has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either –

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

Under § 25.2518-1(b), if a qualified disclaimer is made, the property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Section 2501 provides for a gift tax on the transfer of property by gift. Section 2511 provides that the gift tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(c) provides that an interest in property that gratuitously passes from one individual to another, regardless of the manner in which it passes, is a gift for purposes of the gift tax. However, if local law permits the complete, unqualified refusal to accept the ownership of an interest in property, an individual may disclaim an interest in property created in the individual, and the disclaimer, if it meets certain requirements, will not be a gift for purposes of the federal gift tax.

Section 2702 provides special valuation rules in case of transfers of interests in trusts to or for the benefit of a member of the transferor's family where the transferor retains an interest.

In the present situation, each Disclaimant proposes to disclaim his or her entire interest in Trust. The disclaimers will be non-qualified disclaimers for purposes of § 2518 because the disclaimers will not be made within 9 months of the date on which the transfer creating the interest in Trust was made. With respect to a non-qualified disclaimer, the property is treated for federal gift, estate, and GST tax purposes as passing from the disclaimant to the person entitled to receive the property as a result of the disclaimer. Therefore, based on the facts and representations, we conclude that a non-qualified disclaimer by a Child of Settlers or a Named Spouse of a Child of Settlers of his or her entire interest in Trust will be a transfer subject to federal gift tax under § 2501. Each Disclaimant is disclaiming his or her entire interest in Trust, and therefore, the special valuation rules of § 2702 will not apply.

Ruling Requests 2, 3, and 4 - GST Tax

Section 2601 imposes a tax on every GST. Section 1431(a) of the Tax Reform Act of 1986 (1986 Act), 1986-3 (Vol. 1) C.B. 1, 634, and § 26.2601-1(a) provides that the tax will apply to any GST made after October 22, 1986.

Section 2611(a) defines the term “generation-skipping transfer” to mean (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip. Section 2611(b)(2) provides that the term “generation-skipping transfer” does not include any transfer to the extent (A) the property transferred was subject to a prior tax imposed under this chapter, (B) the transferee in the prior transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the transferee of this transfer, and (C) such transfer does not have the effect of avoiding tax under this chapter with respect to any transfer.

Section 2612(a) provides that a taxable termination means a termination by death, lapse of time, release of a power, or otherwise of an interest in property held in a trust where the property passes to a skip person. Section 2612(b) provides that a taxable distribution means any distribution from a trust to a skip person other than a taxable termination or a direct skip. Section 2612(c) provides that a direct skip means a transfer subject to a tax imposed by chapters 11 or 12 of an interest in property to a skip person.

Section 2613 defines the term “skip person” as (1) a natural person who is assigned to a generation that is two or more generations below that of the transferor, or (2) a trust in which either (a) all interests are held by skip persons or (b) there is no person holding an interest in the trust and at no time after the transfer may a distribution (including distributions upon termination) be made from the trust to a non-skip person.

Section 2652(a) defines the term “transferor” for GST tax purposes. In general, the transferor is the last person with respect to whom the property was subject to an estate or gift tax.

Under § 26.2654-1(a)(2)(i), if there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13.

In the present situation, each of the Disclaimants and each grandchild of Settlers have interests in Trust. As discussed above, each Disclaimant will execute a non-qualified disclaimer of his or her entire interest in Trust and, as a result, will make a transfer that is subject to gift tax. Therefore, each Disclaimant will be treated as the transferor for GST tax purposes to the extent of his or her gift. As provided in § 26.2654-1(a)(2)(i), if there is more than one transferor with respect to a trust, the portions of Trust attributable to the different transferors are treated as separate trusts for

purposes of chapter 13. Because the Disclaimants are not a generation that is two or more generations above a grandchild of Settlers, after the proposed disclaimers, a grandchild of Settlers will not be a skip person as defined in § 2613 with respect to these portions of Trust. With respect to the interests in Trust held by each grandchild of Settlers prior to the execution of the proposed disclaimers, upon execution of the proposed disclaimers a taxable termination occurs with respect to this portion of Trust because, after the proposed disclaimers, a non-skip person will no longer have an interest in this portion of Trust. Therefore, based on the facts and representations, we conclude as follows:

1. As a result of the non-qualified disclaimers, each disclaiming Child or Named Spouse of a Child will be treated as the transferor to the extent of the gift both for purposes of the federal gift tax under chapter 12 and the federal GST tax under chapter 13.

2. As a result of the taxable termination occurring upon the execution of a non-qualified disclaimer by a Child of Settlers or a Named Spouse, Trust will be subject to GST tax, but only as to the interests held by the grandchildren of Settlers at the time of the disclaimers.

3. After execution of the proposed disclaimers, with respect to the portions of Trust in which the Disclaimants become transferors for purposes of chapter 13, neither Trust nor any grandchild of Settlers will be subject to GST tax upon any future distributions to a grandchild of Settlers. With respect to the remaining portion of Trust, because a taxable termination occurred with respect to this portion, neither Trust nor any skip person who is a beneficiary will be subject to further GST tax.

The rulings contained in this letter are based upon information submitted and representations made by the taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. 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.

This ruling is directed only to the taxpayers requesting 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,

James F. Hogan
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: