Internal Revenue Service

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Person To Contact:
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Refer Reply To:
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Date: July 15, 2011

Re:

Legend:

Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Year 1	=
Settlor	=
Son	=
Son's Grandfather	=
Country 1	=
Country 2	=
Trust	=
State 1	=
State 2	=
Child 1	=
Child 2	=
Child 3	=
Child 4	=
Child 5	=
Child 6	=

Child 7 =
Court =

Individual 1 =
Individual 2 =
Individual 3 =

Dear :

This letter responds to the letter dated January 27, 2011, and subsequent correspondence, submitted by your authorized representative, requesting rulings regarding the estate and generation-skipping transfer (GST) tax consequences of Son's proposed exercise of his power of apportionment.

The facts and representations submitted are summarized as follows:

Settlor, a citizen of Country 1, established an irrevocable trust (Trust), under an instrument (Deed), which was executed on Date 1. Trust benefits Settlor's son (Son) and Son's issue. Trust is held in two equal parts, the First Part and the Second Part. This ruling request concerns only the Second Part which, under Clause 3(b) of Deed, consists of the residue of Trust after deducting the principal of the First Part. Currently, Son has seven children, twenty-three grandchildren, and two great-grandchildren, all citizens of Country 2. Son and his first wife had five children. Son and his second wife had two children. Son is currently in his third marriage.

Clause 5(b) of Deed provides that when Son's eldest child reaches age twenty-one, Son "shall be entitled to---receive all interest, interest on interest, fruits and revenues thereafter to be derived from the [Second Part] until his death." Son's eldest child reached age twenty-one on Date 2. Therefore, Son is currently entitled to receive all of the income and principal from the Second Part for his lifetime.

Under Clause 5(f), if and when Son dies after his eldest child reaches the age of twenty-one years, "the then-existing residue of the [Second Part] shall be vested absolutely in the surviving issue, in equal shares, per stirpes, of [Son] . . . subject, however, to delivery of such property only as and when provided in Clause 8."

Clause 6 provides that "Notwithstanding the time provided for vesting, in paragraphs (b), (c), (d), (e) and (f) of Clause 5, the [Trustees] may postpone such vesting to any dates or dates later than the twenty-first birthday of the eldest child to be vested as provided therein, but not later than the death of [Son] . . . if, in the opinion of the [Trustees] and at their sole discretion and option, they consider any such postponement desirable."

Under Clause 7, “Notwithstanding the terms of Clause 5 and any other clauses of this Deed, respecting equality of shares, [Son] may at any time prior to the date of vesting of the . . . [Second Part] in his issue, . . . unequally apportion the respective shares of the said issue in the . . . [Second Part]. The extent, nature, form and situs of the said shares shall be left entirely to the discretion of [Son]. . . . Any such decision respecting apportionment may be altered or revoked by [Son] . . . at any time or times prior to the date of such vesting. . . .” However, if Son has issue born of more than one marriage, any exercise of this power is subject to the consent of the majority of outside (non-family) trustees.

Under Clause 8, although Son’s issue are vested under Clause 5 in the property of [Second Part], he or she is only entitled to delivery of half of his or her respective share of such property when he or she attains the age of thirty respectively, and the remaining half of his or her share when he or she attains the age of forty. Prior to reaching these ages, such issue are entitled to receive the interest, interest on interest, fruits and revenues from his or her share.

Under Clause 9, great-grandchildren of Settlor who, under the provisions of Deed, become vested, shall be entitled to delivery on the dates when their father or mother would have been entitled to delivery, as provided in this Deed, had such father or mother lived.

Clause 10(b) provides that “Notwithstanding any other terms of this Deed, after the [First Opening], the [Trustees] may disburse, pay and deliver to or for the account or benefit of [Son] . . . all such sums of money or other property moveable or immoveable, from the [Second Part], as his or her or their absolute property as the case may be, should the said [Trustees[alone, and in their sole and unrestricted discretion and at any time or times and from time to time, and to such extent and in such form and proportions as the [Trustees[alone may consider desirable . . . without the necessity of any return of all such moneys or property to the [Second Part]. . . .”

Clause 22 provides that Deed shall, at all times, be construed according to the laws of State 1, which is in Country 1.

Pursuant to a Date 3 Declaratory Judgment by Court and a Date 5 Resolution of the trustees, the trustees of Trust divided Trust into seven separate equal trusts, with Son being the income and discretionary capital beneficiary during his lifetime in accordance with Deed and, to the extent not apportioned otherwise by Son, each such trust vesting absolutely in one of Son’s seven children (or if such child is not then living, such child’s then surviving issue per stirpes). Accordingly, upon Son’s death and, to the extent not apportioned by Son, Trust A will vest in Child 1; Trust B will vest in Child 2; Trust C will vest in Child 3; Trust D will vest in Child 4; Trust E will vest in Child 5; Trust F will vest in Child 6, and Trust G will vest in Child 7. Each trust is governed by Deed.

Court also declared that Son's power of apportionment could be exercised by way of fractional or percentage shares of the corpus of the Second Part or on the basis of specific assets or designated amounts thereof to one or more of his children or remote issue (and whether or not the child or other issue of Son who is the parent of such more remote issue, has predeceased), without any requirement for other assets or amounts or shares being apportioned to other of his children or more remote issue, without the requirement of equality among the beneficiaries or family branches.

Court further declared that the trustees may retain a beneficiary's vested interest in trust up to the 21st anniversary of the death of the last surviving descendant of Son's Grandfather, who was living on Date 1.

Pursuant to a Date 4 Declaratory Judgment by Court and a Date 6 Resolution of the trustees, the trustees divided Trusts A through G into fourteen separate equal trusts. Accordingly, Trust A was divided into Trust A1 and Trust A2; Trust B was divided into Trust B1 and Trust B2; Trust C was divided into Trust C1 and Trust C2; Trust D was divided into Trust D1 and Trust D2; Trust E was divided into Trust E1 and Trust E2; Trust F was divided into Trust F1 and Trust F2, and Trust G was divided into Trust G1 and Trust G2. Son continued to have a lifetime interest in income and principal in each trust. Each child of Son continued to have the respective child's interest in the divided trust. For example, Child 1 held an interest in Trust A1 and Trust A2. Each trust is governed by Deed.

Pursuant to a Date 7 Declaratory Judgment by Court and a Date 8 Resolution of the trustees, the trustees combined Trusts A2, B2, C2, D2, E2, F2, and G2. (Combined Trust). Trusts A1, B1, C1, D1, E1, F1, and G1 remained separate trusts (Split Trusts). Son continued to have a lifetime interest in the income and principal in the Split Trusts and the Combined Trust. Following this action by the trustees, there are seven Split Trusts, each trust benefitting the specific child named in the Date 3 Declaratory Judgment and Date 5 Resolution. The Combined Trust, to the extent not apportioned otherwise by Son, will vest absolutely in Son's surviving issue, per stirpes, upon the death of Son. Combined Trust and the Split Trusts are governed by Deed.

Son proposes to exercise his power of apportionment in an Instrument of Apportionment (Apportionment). The apportionment will be effective at Son's death and is revocable at any time prior to Son's death. Under Apportionment, at Son's death, Combined Trust will be divided into equal shares for Son's children who survive him and Son's children who predecease him but leave issue surviving him (each share referred to herein as a child's family's share). If a respective child of Son or any one of that child's issue survives Son, the respective child's family's share of Combined Trust plus the Split Trust benefitting that child (the child's Split Trust) will be apportioned outright in

specified amounts to named individuals in a class that includes the respective child and that child's children and grandchildren who were born during Son's lifetime.

Any remaining balance of the respective child's family's share of Combined Trust plus that child's Split Trust will be apportioned to a trust (Sprinkle Trust) for the benefit of the respective child of Son and the child's children and grandchildren who were born during Son's lifetime and who have survived Son. The trustees of each Sprinkle Trust will have absolute discretion to distribute income and principal of the Sprinkle Trust among such beneficiaries prior to the Final Distribution Date. In the event of any residue upon the Final Distribution Date, the trustees shall pay the balance of the respective Sprinkle Trust to the beneficiaries as are then living, and in such amounts and proportions as the trustees determine in their sole and absolute discretion, or, if none are living on the Final Distribution Date, to such of Son's then living issue, in equal shares, per stirpes, provided that all issue of Son born after his death shall be deemed to be deceased. The Final Distribution Date shall be the Perpetuities Date, or the death of all of the beneficiaries of the respective Sprinkle Trust, if sooner. The term "Perpetuities Date" means the date twenty-one years after the death of the last survivor of Grandfather, Individual 1, and Individuals 2 and 3, who were living on Date 1, the date Deed was executed. All of the Sprinkle Trusts created under Apportionment will be governed by Deed, except with respect to the Perpetuities Date provided for in Apportionment.

It is represented that all of the outside trustees of the Combined Trust and Split Trusts will consent to Apportionment when Son executes Apportionment. The trustees of the Split Trusts and Combined Trust will file a Motion for Declaratory Judgment with Court asking Court to declare that Son can exercise the power of apportionment granted to him under Clause 7 of Deed, as proposed. There have been no additions, actual or constructive, to Trust, the Split Trusts, or the Combined Trust after the original funding in Year 1.

Son and the trustees of the Split Trusts and Combined Trust have requested the following rulings:

1. Son's proposed exercise of his power of apportionment, as provided in Apportionment, will not cause the assets of the Split Trusts, Combined Trust, or Sprinkle Trusts to be includible in his gross estate under § 2041.

2. Son's proposed exercise of his power of apportionment, as provided in Apportionment, will not cause the Split Trusts, Combined Trusts, or the Sprinkle Trusts, to become subject to chapter 13.

Ruling #1:

Section 2041(a)(1) of the Internal Revenue Code provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent (A) by will, or (B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

Section 2041(b)(1) defines the term “general power of appointment” as a power exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or creditors of the decedent's estate.

Section 20.2041-1(b) of the Estate Tax Regulations states that a power of appointment includes all powers that are in substance and effect powers of appointment, regardless of the nomenclature used in creating the power.

Section 20.2041-1(c)(1) provides that a power of appointment is not a general power if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate, or (b) expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

In the present case, Son’s power of apportionment granted to him under Clause 7 of Deed is a power of appointment for purposes of § 2041. See § 20.2041-1(b). All of the Split Trusts and Combined Trust are governed by Deed. Son’s power is revocable at any time before the Second Part vests in his issue and, accordingly, Son’s exercise of his power will not be effective until Son’s death. Clause 7 limits the exercise of Son’s power of appointment to a class consisting of Son’s issue. Therefore, because Son cannot appoint the assets of these trusts to himself, his creditors, his estate, or the creditors of his estate, Son’s power of appointment is not a general power of appointment as described in § 2041.

Accordingly, based on the facts submitted and representations made and, assuming Son exercises his power as proposed, and Court renders a declaratory judgment, as requested in the trustee’s motion, Son’s proposed exercise of his power of apportionment, as provided in Apportionment, will not cause the assets of the Split Trusts, Combined Trust, or Sprinkle Trusts to be includible in his gross estate under § 2041.

Ruling #2:

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

Under § 1433(a) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer (GST) tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the tax does not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided under § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the post-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 a special rule for certain powers of appointment. This section 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, such power of appointment is not exercised in a manner that may postpone or suspend the vesting, 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.

Son's limited power of appointment was created under Deed which governs Trust, the Split Trusts, and the Combined Trust. Trust was an irrevocable trust prior to September 25, 1985. It is represented that no additions have been made to Trust, the Split Trusts, or the Combined Trust since that date. Consequently, Trust, the Split Trusts, and the Combined Trust are not subject to chapter 13. Under Clauses 8 and 9 of Deed, an interest that vests in a beneficiary under the age of 40 will be held in trust for the sole benefit of that individual until that individual reaches age 40. Under the Date 3 Judgment, the trustees may retain a beneficiary's vested interest in trust up to the 21st anniversary of the death of the last surviving descendant of Son's Grandfather, who was living on Date 1. Under Apportionment, every Sprinkle Trust created under

Apportionment must vest in the beneficiaries to whom distributions could then be made no later than the date that is twenty-one years after the death of the last survivor of the issue of Grandfather and Individuals 1 through 3, who were living on Date 1, the date Deed was executed. Therefore, Son's proposed exercise of his power of apportionment will not postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period**,** measured from the date of creation of Trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years.

Accordingly, based on the facts submitted and representations made and, assuming Son exercises his power as proposed and Court renders a declaratory judgment as requested in the trustees' motion, Son's proposed exercise of his power of apportionment, as provided in Apportionment, will not cause the Split Trusts, the Combined Trusts, or the Sprinkle Trusts, to become subject to chapter 13.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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.

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 Taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

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

Enclosures
Copy for section 6110 purposes
Copy of this letter