

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201250001**

Release Date: 12/14/2012

Index Number: 2501.03-00, 2601.03-08

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-107632-12

Date:

August 10, 2012

Donor =
Country A =
Country B =
Country C =
Trust X =
Subtrust A =
Subtrust A-1 =
Subtrust A-2 =
Subtrust A-3 =
Subtrust A-4 =
Subtrust A-5 =
Subtrust B =
Date 1 =
Date 2 =
Date 3 =
State =
Order 1 =

Order 2 =

State Statute =
Citation 1 =
Citation 2 =

Dear _____ :

This letter responds to your authorized representative's letter dated February 14, 2012, and subsequent correspondence, requesting rulings on the federal gift and generation-skipping transfer (GST) tax consequences of a proposed disclaimer of income interests in certain subtrusts.

The facts and representations submitted are as follows: Donor is a citizen of both Country A and Country B, and a resident of Country C. At no time has Donor been a United States citizen or a lawful permanent resident.

Donor is the sole current income beneficiary of Subtrust A and Subtrusts A-1 through A-5. Subtrust A and Subtrusts A-1 through A-5 are subtrusts under Trust X. Trust X was created by Donor's father and became irrevocable on his death on Date 1, a date prior to September 25, 1985.

On Date 2, Trust X was divided into two separate subtrusts pursuant to Order 1, Subtrust A for the benefit of Donor and Donor's descendants, and Subtrust B for the benefit of Donor's brother and his descendants. On Date 3, Subtrust A was divided into five separate subtrusts (Subtrusts A-1 through A-5), pursuant to Order 2, with each of Donor's children as the remainder beneficiary of each respective subtrust.

Upon Donor's death and until the trusts terminate on the later of the death of Donor or Donor's brother, the trust income of Subtrust A and Subtrusts A-1 through A-5 will be payable to the respective child of Donor for whom the subtrust was created. Upon termination, the assets will be distributed to the remainder beneficiaries of Subtrust A and Subtrusts A-1 through A-5.

Subtrust A and Subtrusts A-1 through A-5 are governed by State law.

Donor proposes to execute releases of her income interests in Subtrust A and Subtrusts A-1 through A-5.

Donor requests the following rulings:

1. Donor's release of her income interests in Subtrust A and Subtrusts A-1 through A-5 will not be subject to gift tax under § 2501(a)(2) of the Internal Revenue Code.
2. Donor's release of her income interests in Subtrust A and Subtrusts A-1 through A-5 will not constitute a constructive addition under § 26.2601-1(b)(1)(v)(A) of the Generation-Skipping Transfer Tax Regulations.

Ruling 1

Section 2501(a)(1) provides that a tax, computed as provided in § 2502, is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2501(a)(2) provides that, except as provided in § 2501(a)(3) (referencing a special gift tax regime for individuals who expatriate with the principal purpose of avoiding U.S. taxes), § 2501(a)(1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

Section 2511(a) provides, in part, that subject to the limitations contained in chapter 12, the 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; but in the case of a nonresident not a citizen of the United States, § 2501 shall apply to a transfer only if the property is situated within the United States.

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, gift, and GST taxes, the interest will be treated as if it had never been transferred to the disclaimant. Section 2518(b) defines the term “qualified disclaimer” to mean an irrevocable and unqualified refusal by a person to accept an interest in property but only if:

(1) such refusal is in writing;

(2) such 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 which is nine months after the later of the date on which the transfer creating the interest in such person is made, or the day on which such person attains age 21;

(3) such person 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 to the spouse of the decedent, or to a person other than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides, in part, that if a person makes a qualified disclaimer, then, for purposes of the Federal estate, gift, and GST tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift.

Section 25.2518-2(d)(1) provides that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act that is consistent with ownership of the interest in

property. Acts indicative of acceptance include using the property or the interest in property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in the property. However, merely taking delivery of an instrument of title, without more, does not constitute acceptance. Moreover, a disclaimant is not considered to have accepted property merely because under applicable local law title to the property vests immediately in the disclaimant upon the death of the decedent.

In this case, Donor is the beneficiary of trust income from Subtrust A and Subtrusts A-1 through A-5 and has received income distributions from the trusts. As such, Donor has accepted the benefits of the subtrusts. Accordingly, Donor's release of her income interest in Subtrust A and Subtrusts A-1 through A-5 will not constitute a qualified disclaimer and will be treated as a transfer of Donor's existing income interest. However, Donor is a nonresident not a citizen of the United States, and is not an expatriate of the United States. Accordingly, no gift tax will be imposed if Donor's transfer constitutes a transfer of intangible property under § 2501(a)(2).

The term "intangible property" is not defined in chapter 12 of the Code or the regulations thereunder. However, § 25.2511-3 states that shares of stock and debt obligations constitute intangible personal property for purposes of determining the situs of such property (which is relevant to determine whether the gift tax applies to such property when transferred by certain nonresidents not citizens who are expatriates or engaged in a business in the United States).

State Statute provides, in relevant part, that for purposes of computing taxable income of a nonresident or part-year resident, the nonresident beneficiary is deemed to be the owner of intangible personal property from which the income of the estate or trust is derived.

State statutory law is silent, however, on whether a beneficial trust interest is tangible or intangible. However, Citation 1 is instructive and is controlling State precedent. In that case, a State court held that a trust income beneficiary had no taxable ownership interest in the trust's underlying assets. The court noted that the beneficiary in that case was entitled only to income, with no right to principal, and further had no right to change the terms of the trust, no right to remove the trustees, and no right to appoint or withdraw principal during her lifetime or upon her death. In sum, the court concluded that "while the evidence shows [the beneficiary] was income beneficiary of the trust, she had no substantial ownership rights in the trust corpus itself." See Citation 2 (considering the term "intangible property" in the context of a state sales tax exception, and noting that "[a]lthough there appears to be no comprehensive definition of intangible property, such property is generally defined as property that is a 'right' rather than a physical object.>").

In this case, Donor has an income interest in Subtrust A and Subtrusts A-1 through A-5. Donor has no additional interest in or powers with respect to trust corpus. We conclude that Donor's income interest constitutes intangible property, not tangible or real property.

Accordingly, Donor's transfer of her income interest in Subtrust A and Subtrusts A-1 through A-5 which results from the release of such income interests will be a transfer of intangible property within the meaning of § 2501(a)(2) and such transfer will not be subject to gift tax.

Ruling 2

Section 2601 imposes a tax on every GST made by a transferor to a skip person. A GST is defined under § 2611(a) as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(a) of the Tax Reform Act of 1986 (TRA of 1986) provides that, except as provided in § 1433(b), the GST tax applies to GSTs made after October 22, 1986. Section 1433(b)(2)(A) of the TRA of 1986 provides that the GST tax does not apply to transfers under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(i) provides that the provisions of chapter 13 do not apply to any GSTs under a trust if the trust 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, in part, that where any portion of a trust remains in the trust after the 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 an addition to the trust. 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 2663 provides, in part, that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of chapter 13, including regulations (consistent with the principles of chapters 11 and 12) providing for the application of chapter 13 in the case of transferors who are nonresidents not citizens of the United States.

Section 26.2663-2 provides rules for applying the GST tax to transfers by a transferor who is a nonresident not a citizen of the United States. Section

26.2663-2(b)(1) provides, in relevant part, that a transfer by a nonresident not a citizen of the United States is a direct skip subject to chapter 13 only to the extent that the transfer is subject to Federal estate or gift tax within the meaning of § 26.2652-1(a)(2).

Under § 2652(a)(1), the term “transferor” means, in part, the donor in the case of any property subject to the tax imposed by chapter 12.

Section 26.2652-1(a)(1) provides, for GST purposes, that the individual with respect to whom property was most recently subject to federal estate or gift tax is the transferor of that property.

Section 26.2652-1(a)(2) provides, for GST purposes, that a transfer is subject to federal gift tax if a gift tax is imposed under § 2501(a) (without regard to exemptions, exclusions, deductions, and credits).

In this case, Trust X became irrevocable on a date prior to September 25, 1985. Donor represents that there have been no additions, constructive or otherwise, to Trust X, nor any of the subtrusts created from the division thereof, since September 25, 1985. In Ruling 1 above, we concluded that Donor’s disclaimer of her income interests in Subtrust A and Subtrusts A-1 through A-5 were transfers with respect to which gift tax will not be imposed. Accordingly, Donor is not the transferor of any property subject to federal gift tax within the meaning of § 26.2652-1(a)(1). Therefore, we conclude that Donor’s release of her income interests will not constitute a constructive addition within the meaning of § 26.2601-1(b)(1)(v)(A) and will not cause chapter 13 of the Code to apply to Donor as a nonresident not a citizen under § 26.2663-2(b)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we are not ruling on whether the prior division of Trust X and subsequent division of Subtrust A caused Trust X or any of the subtrusts created thereunder to lose their status as grandfathered GST-exempt trusts.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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.

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.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: