

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend

Taxpayer
Trustee
Decedent
Wife
Sister-in-law
Date 1
Date 2
Date 3
Date 4
Country 1
Country 2
Country 3
Trust 1
Trust 2
Trust 3
a

Dear _____ :

This letter responds to your personal representative's letter of May 21, 2012, requesting a ruling that the generation-skipping transfer (GST) tax does not apply to distributions from Trust 1 and the estate of Decedent.

The facts and representations submitted are summarized as follows:

On Date 1, Decedent, a resident and citizen of Country 1, executed Trust 1. Trust 1 has a situs in Country 1. Decedent funded Trust 1 with his residence which is located in Country 1.

On Date 2, Decedent executed Trust 2. Decedent executed a Letter of Wishes directing the trustees of Trust 2 to: (i) distribute a percent of the net annual income to Taxpayer during her lifetime or until Taxpayer's firstborn child reaches age 21; (ii) accumulate the remaining income of Trust 2; (iii) terminate Trust 2 on the earlier of Taxpayer's death or when Taxpayer's firstborn child reaches age 21, and (iv) upon termination, distribute the assets of Trust 2 to Taxpayer, if living, and if not, to Taxpayer's surviving children. Currently, Trustee, an independent corporate trustee licensed in Country 2, is the trustee of Trust 2.

On Date 3, Decedent executed his will which provides that Trust 1 is to cease and terminate upon Decedent's death and the assets of Trust 1 are to be paid over to the executors of Decedent's estate. Further, Decedent directed the executors to establish Trust 3 from a portion of the assets from Trust 1 to benefit Sister-in-Law and provide that upon the death of Sister-in-Law, the remaining portion of the assets from Trust 3 is to be paid to Taxpayer. Decedent also directed his executors to pay the remainder of his estate to Trust 2. In the will, Decedent directed the executors to consider paying such residue outright to Taxpayer rather than to Trust 2.

Decedent died on Date 4. Subsequent to Decedent's death, the trustees of Trust 1 sold the residence, the asset held in Trust 1. The proceeds from the sale consisted of currency issued by Country 1. Trust 1 was terminated, as provided in Decedent's will. A portion of the proceeds were used to establish Trust 3 and the remaining proceeds are available for distribution to Trust 2 or outright to Taxpayer. Taxpayer represents that the costs of trust administration and tax compliance are very expensive for Trust 2. Accordingly, Trustee desires to terminate Trust 2 and make a final distribution to Taxpayer.

Taxpayer is unrelated to Decedent and is more than 37 ½ years younger than Decedent but not more than 62 ½ years younger than Decedent. Taxpayer is a citizen of Country 1 and a resident alien of the United States. The assets of Trust 1 consist of bank deposits holding currency issued by Country 3 and the assets of Decedent's estate consist of currency issued by Country 1.

You have requested the following ruling:

The GST tax will not apply to the distributions received by Taxpayer from Trust 2 and Decedent's estate.

LAW AND ANALYSIS

Section 2101(a) of the Internal Revenue Code provides that a tax is imposed on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States.

Section 2103 provides that for the purpose of the tax imposed by § 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate which at the time of his death is situated in the United States.

Under § 2501(a)(1), a tax is imposed on the transfer of property by gift during each calendar year by an individual, resident or nonresident.

Under § 2511(a), 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, the gift tax shall apply to a transfer only if the property is situated within the United States.

Section 25.2511-3(b)(1) of the Gift Tax Regulations provides that for purposes of applying the gift tax to the transfer of property owned and held by a nonresident not a citizen of the United States at the time of the transfer, real property and tangible personal property constitute property within the United States only if they are physically situated therein.

Section 2601 imposes a tax on every generation-skipping transfer. The term generation-skipping transfer is defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 2612(a) provides that the term "taxable termination" means the 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 with respect to the transferor of the property. Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person (other than a taxable termination or a direct skip). Under § 2612(c)(1), a direct skip is a transfer subject to federal estate or gift tax of an interest in property to a skip person.

Section 2613 provides that the term "skip person" means (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust (A) if all interests in such trust are held by skip persons, or (B) if (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2651(d) provides that an individual who is not assigned to a generation by reason of § 2651(b) and § 2651(c) shall be assigned to a generation on the basis of the date of such individual's birth with -- (1) an individual born not more than 12 ½ years after the date of the birth of the transferor assigned to the transferor's generation, (2) an

individual born more than 12 ½ years but not more than 37 ½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and (3) similar rules for a new generation every 25 years.

Section 26.2652-1(a)(2) of the Generation-Skipping Transfer Tax Regulations provides that, for GST purposes, 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). A transfer is subject to federal estate tax if the value of the property is includible in the decedent's gross estate as determined under § 2031 or § 2103.

Section 2663 provides, in part, that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the GST tax, including regulations (consistent with the principles of the estate and gift tax) providing for the application of the GST tax 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 (NRA transferor). Section 26.2663-2(b)(1) provides that a transfer by a NRA transferor is a direct skip subject to GST tax only to the extent that the transfer is subject to the federal estate or gift tax within the meaning of § 26.2652-1(a)(2).

Section 26.2663-2(b)(2) provides that the GST tax applies to a taxable distribution or a taxable termination to the extent that the initial transfer of property to the trust by a NRA transferor, whether during life or at death, was subject to the federal estate or gift tax within the meaning of § 26.2652-1(a)(2).

When Trust 1 and Trust 2 were established, Decedent was a citizen and resident of Country 1. For purposes of §§ 2511(a) and 2101, Decedent was a nonresident not a citizen of the United States. The residence and cash transferred to the trusts and the cash in the estate were not situated in the United States. Accordingly, the transfers to the trusts were not subject to the federal gift tax, and the residue of the estate was not subject to the federal estate tax. For purposes of the GST tax, Decedent was a NRA transferor with respect to these transfers. Further, Taxpayer is a skip person, as defined in §§ 2651(d) and 2613. However, under § 26.2663-2, the GST tax does not apply to taxable distributions or taxable terminations to the extent the initial transfer of property to the trust by a NRA transferor was not subject to the federal estate or gift tax. As noted above, the transfers to the trusts were not subject to federal gift tax and the residue of Decedent's estate was not subject to federal estate tax. Therefore, the distributions from the estate and terminating distributions from Trust 2 are not subject to GST tax. Accordingly, based on the facts submitted and the representations made, we conclude that the GST tax does not apply to the distributions received by Taxpayer from Trust 2 and Decedent's estate.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

Sincerely,

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

Enclosures

Copy for § 6110 purposes
Copy of this letter