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Third Party Communication: None

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PLR-103958-14, PLR-103959-14

PLR-103960-14, PLR-103961-14

PLR-103962-14, PLR-103963-14

PLR-103965-14, PLR-103966-14

PLR-103967-14, PLR-103968-14

PLR-103969-14, PLR-103970-14

Date: JULY 10, 2014

Legend

Trust

Donor

Child 1

Grandchild 1a

Grandchild 1b

Grandchild 1c

Grandchild 1d

Child 2

Grandchild 2a

Grandchild 2b

Grandchild 2c

Child 3

Grandchild 3a

Date 1

Date 2

State 1 Court

State 1

State 2

a

b

c

d

State 2 Statute 1

State 2 Statute 2

State 2 Statute 3

State 2 Statute 4

Dear _____ :

This letter responds to your authorized representative's letter dated January 17, 2014, requesting income, gift, estate, and generation-skipping transfer (GST) tax rulings with respect to the proposed division and modification of Trust.

The facts and representations submitted are summarized as follows:

Donor established Trust on Date 1 for the benefit of his children and their issue. Currently, the beneficiaries of Trust are the Donor's three children, Child 1, Child 2, and Child 3, and eight grandchildren. Grandchild 1a, Grandchild 1b, Grandchild 1c, and Grandchild 1d are the minor children of Child 1. Grandchild 2a, Grandchild 2b, and Grandchild 2c are the minor children of Child 2. Grandchild 3a is the minor child of Child 3. Trustee resides in State 1 and the current place of administration is State 1. Trust provides that it is to be interpreted in accordance with the laws of State 2.

Article Second (a) of Trust provides, in relevant part, that the trustees may from time to time pay or apply the net income from Trust property to or for the benefit of one or more of Donor's issue in such amounts and manner and at such times as the trustees in their absolute discretion deem best.

Article Second (d) provides, in relevant part, that during the lifetime of Donor, each person eligible to receive income that is living when the original or any subsequent transfer of property is made to the trustees may demand an amount not exceeding, for the calendar year in which such transfer is made, the lesser of the following amounts: (i) \$5,000 or five percent of the market value of such trust principal at the time of the request, whichever is larger; (ii) \$a; or (iii) the beneficiary's share of such transfer. The trustees are to give written notice to such beneficiaries within b days of such transfer and such demand is to be made in writing on or before the c day after such notice is given or by the end of such calendar year, whichever occurs first. The trustees are also authorized in their discretion at any time, or from time to time, to make or apply payments of principal to or for the benefit of any beneficiary eligible to receive Trust income, in such amounts as the trustees in their absolute discretion may deem advisable.

Article Second (b) provides, in relevant part, that when (i) after the death of Donor, when none of his children is then living and under the age of d, or (ii) upon the death of the Donor at which time none of his children is then living, Trust is to be divided

into as many equal shares as there are children of Donor then living and deceased children leaving issue then living. Each share set apart for a child who is then living is to be retained in a separate trust and so much of the net income as the trustees may from time to time determine is to be paid to or applied for the benefit of such one or more of said child and child's issue in such amounts and manner, and at such times as the trustees in their absolute discretion deem best. Upon the death of that child, the child will have a testamentary power of appointment that can be exercised in favor of and among Donor's issue and their spouses, including child's spouse (but not including child or child's estate), outright or upon such terms or trusts and with such powers or appointment as child may appoint by will. Each share set apart for a deceased child of Donor is to be distributed to the issue of the deceased child by right of representation.

Article Fourth provides, in relevant part, that at no time are more than half of the trustees to be related or subordinate parties who are subservient to the wishes of Donor, as those terms are used in § 672(c) of the Internal Revenue Code. The trustees may at any time and from time to time appoint an additional trustee with the consent, however, of a majority of the beneficiaries of the trust, if any, as are then entitled or eligible to receive the income of the trust and are of full age and legal capacity. In no event are Donor or Donor's spouse to be trustees. Under the provisions of Article Second, certain discretionary powers respecting the payment of income and principal are given to the trustees. If and so long as a beneficiary is a trustee, said discretionary powers are to be exercised for the benefit of such beneficiary only by the other trustees.

The trustees and beneficiaries propose to divide Trust into three new trusts, to be known as the "Divided Trusts." Each of the three Divided Trusts will be for the benefit of one of Donor's three children and that child's issue. The Trust assets distributed to the Divided Trusts will be distributed equally, either on a pro rata or non-pro rata basis. The income and principal provisions of the Divided Trusts will be the same as the income and principal provisions of Trust, except that the beneficiaries of each child's Divided Trust are limited to that child and that child's issue. Each of the Divided Trusts will terminate and the assets of the Divided Trust will be distributed to the issue of the child for whom the Divided Trust was created on the same terms as Article Second (b) of Trust.

The trustees and beneficiaries also propose to modify the terms of Trust pertaining to who can be a trustee. Trust as modified provides that there shall always be at least one independent trustee of each trust. Each of the Divided Trusts may, but is not required to, have the same independent trustee as the other Divided Trusts. The term "independent trustee" means a bank or trust company with trust powers or an individual. The independent trustee shall not be (i) a related or subordinate party to any beneficiary as defined in § 672(c); (ii) a beneficiary of any trust; or (iii) under any legal obligation to support any beneficiary of any trust. If the independent trustee resigns or is otherwise unable or unwilling to serve in the capacity of trustee for any reason, then a majority of the beneficiaries shall appoint an independent trustee as its successor.

Each child may appoint himself or herself as a co-trustee of that child's trust to serve with the independent trustee. Each child may remove and replace the independent trustee of that child's trust with another independent trustee from time to time.

The modified Trust also provides that the discretionary powers, respecting the payment of income and principal, given to the trustees are to be exercisable only by the independent trustee. No individual trustee who is also a beneficiary of any Divided Trust may participate in the exercise of such discretionary powers.

The trustee commenced a proceeding in State 1 Court seeking authorization to divide and modify Trust. On Date 2, State 1 Court entered an order authorizing the division and modification of Trust to be effective upon issuance by the Internal Revenue Service of a private letter ruling confirming that Trust as modified continues to be exempt from the GST tax.

State 2 Statute 1 provides that if, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a non-charitable irrevocable trust, the court may approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust.

State 2 Statute 2 provides that the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intent. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

State 2 Statute 3 provides that after notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trusts.

State 2 Statute 4 provides, in relevant part, that on distribution of trust property or the division or termination of a trust, a trustee may make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.

You have requested the following rulings:

1. After the proposed division and modification of Trust, the Divided Trusts will continue to be exempt from the GST tax.

2. The proposed division and modification of Trust will not cause Child 1, Child 2, or Child 3 to have made a taxable gift.
3. The proposed division and modification of Trust will not cause any portion of the assets of the Divided Trusts to be includible in the gross estate of Child 1, Child 2, or Child 3.
4. The allocation of assets and liabilities of Trust among the Divided Trusts, whether done on a pro rata or a non-pro rata basis, will not cause Trust, the Divided Trusts, or any beneficiary to recognize any ordinary income or loss or capital gain or loss.
5. The proposed modification of Trust will not cause Trust, the Divided Trusts, or any beneficiary to recognize any ordinary income or loss or capital gain or loss.
6. The adjusted basis of the assets received by the Divided Trusts will be the same as the respective adjusted basis of the assets held by Trust pursuant to § 1015.
7. The holding periods of the assets received by the Divided Trusts will be the same as the holding periods of the assets in Trust pursuant to § 1223(2).

Ruling 1

Section 2601 of the Internal Revenue Code 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.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the 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 GST tax does not apply to a 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)(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 GST tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. Thus, unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of gain for purposes of § 1001.

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 § 26.2601-1(b)(4)(i)(A), (B), or (C)), 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, if 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 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. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where, in 1980, Grantor established an irrevocable trust for the benefit of Grantor's two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, *per stirpes*. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, *per stirpes*. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, *per stirpes*. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust 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. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In this case, Trust will be divided into three Divided Trusts. The terms of the Divided Trusts will be identical to the terms of Trust, except each Divided Trust will benefit one child and that child's issue and the trustee provisions will be modified to allow each child to act as a co-trustee of his or her trust and to add an independent trustee for each trust. The proposed division and modification will not result in a shift of any beneficial interest in the trusts to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed division and modification will not extend the time for vesting of any beneficial interest in the Divided

Trusts beyond the period provided for in Trust. Accordingly, based on the facts submitted and the representations made, we conclude that after the proposed division and modification of Trust, the Divided Trusts will continue to be exempt from the GST tax.

Ruling 2

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual.

Section 2511(a) provides that the gift tax applies 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 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed to be a gift, and is included in computing the amount of gifts made during the calendar year.

In this case, Child 1, Child 2, and Child 3 will have the same interests in the Divided Trusts after the division that they had as beneficiaries under Trust. Because the beneficial interests of the beneficiaries are substantially the same, both before and after the proposed division and modification of Trust, no transfer of property will be deemed to occur as a result of the division. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division and modification of Trust will not cause Child 1, Child 2, or Child 3 to have made a taxable gift.

Ruling 3

Section 672(c) defines the term "related or subordinate party" to mean any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

Section 2001(a) 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 includes the value of all property to the extent of the interest therein of the decedent at the time of death.

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 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 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 therefrom.

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 an 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 through 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 proposed division and modification of Trust does not constitute a transfer within the meaning of §§ 2036 through 2038. Child 1, Child 2, and Child 3 will have the same interests in the Divided Trusts after the division that they had as beneficiaries under Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division and modification of Trust will not cause any portion of the assets of the Divided Trusts to be includible in the gross estate of Child 1, Child 2, or Child 3.

Rulings 4 and 5

Section 61(a)(3) provides that gross income includes "[g]ains 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 over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent is treated as income or as loss sustained.

Under § 1.1001-1(h)(1), the severance of a trust, occurring on or after August 2, 2007, is not an exchange of property for other property differing materially either in kind or in extent, if (i) an applicable State 2 Statute or the governing instrument authorizes or directs the trustee to sever the trust; and (ii) any non-pro rata funding of the separate trusts resulting from the severance, whether mandatory or in the discretion of the trustee, is authorized by an applicable State 2 Statute or the governing instrument.

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. Cottage Savings Association v. Commissioner, 499 U.S. 554 (1991). Properties exchanged are materially different if the properties embody legal entitlements "different in kind or extent" or if the properties confer "different rights and powers." Id. at 565. In Cottage Savings, the Supreme Court held that mortgage loans made to different obligors and secured by different homes did embody distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans. Id. at 566. In defining what constitutes a "material difference" for purposes of § 1001(a), the Court stated that properties are "different" in the sense that is "material" to the Code so long as their respective possessors enjoy legal entitlements that are different in kind or extent. Id. at 564-65.

A pro rata partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest as a result thereof. See Rev. Rul. 56-437, 1956-2 C.B. 507.

The pro rata division and distribution of the Trust assets to the Divided Trusts is consistent with Rev. Rul. 56-437 and the Supreme Court's opinion in Cottage Savings. In addition, both the division of the Trust and distribution of Trust assets on a non-pro rata basis are authorized by State 2 law. Therefore, the proposed division and non-pro

rata distribution of assets to the Divided Trust is consistent with § 1.1001-1(h)(1)(i). The proposed division and distribution, whether on a pro rata or non-pro rata basis, are not prohibited by the terms of the Trust. The proposed division and distribution, whether on a pro rata or non-pro rata basis, and the proposed changes to the trustee provisions are not exchanges of property for other property differing materially in kind or in extent under §§ 61 and 1001. Accordingly, based on the facts submitted and the representations made, we conclude that the allocation of assets and liabilities of the Trust among the Divided Trusts, whether on a pro rata or a non-pro rata basis, will not cause the Trust, Divided Trusts, or any beneficiary to recognize any ordinary income or loss, or capital gain or loss. We further conclude that the proposed Trust division and modification of the trustee provisions will not cause the Trust, the Divided Trusts, or any beneficiary to recognize any ordinary income or loss, or capital gain or loss.

Rulings 6 and 7

Section 1015(b) 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 a transfer in trust (other than 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 by 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 was made.

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

Under § 1.1015-1(b), 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.

Section 1223(2) provides that in determining the period for which the taxpayer has held property, however it is acquired, there shall be included the period for which the property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of the other person.

In this case, § 1001 does not apply to the proposed transaction. Thus, after the division of Trust and transfer of the assets into the Divided Trusts, the adjusted basis of the assets received by the Divided Trusts will be the same as the respective adjusted

basis of the assets held by Trust pursuant to § 1015. Furthermore, we conclude that, under § 1223(2), the holding period for each asset received by each Divided Trust from Trust will include the period that the asset was held by Trust under § 1223(2).

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