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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-104310-15

Date:
August 01, 2015

Legend

- Trust =
- Trust A =
- Husband =
- Wife =
- Settlors =
- Daughter 1 =
- Daughter 2 =
- Daughter 3 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =
- Year 2 =
- State Court =
- Statute =

Dear :

This letter responds to your representative's letter of January 21, 2015, requesting income, gift, estate, and generation-skipping transfer tax rulings with respect to Trust.

On Date 1, Year 1, Settlers, Husband and Wife, created an irrevocable trust, Trust, for the benefit of Settlers' three children (Daughter 1, Daughter 2, and Daughter 3) and their issue. The trust names an individual trustee and a corporate trustee. Date 1 is after October 22, 1986. It is represented that Settlers allocated sufficient GST exemption to cause Trust to have a zero inclusion ratio for purposes of chapter 13.

Article II, A of Trust provides that the trustees are authorized to accumulate net income, or in the corporate trustee's discretion, distribute the net income to Daughter 1, Daughter 2, or Daughter 3, in equal shares. If any of the Daughters are deceased when such net income is to be distributed, her equal share of net income shall be distributed to her issue living from time to time, *per stirpes*, or if there shall be no such issue of a deceased daughter then living to our then living issue, *per stirpes*.

Article II, B of Trust provides that any net income not distributed is to be accumulated and added to principal annually. Further, the trustees are also authorized to distribute to any one or more of Settlers' issue from time to time living as much of the principal of the trust, even to the extent of exhausting principal, as the corporate trustee believes is desirable for the health, support in reasonable comfort or education of Settlers' issue. The Settlers' primary concern during the life of their daughters is for their health and support in reasonable comfort and the corporate trustee need not consider the interest of any other beneficiary in making distributions to the Settlers' daughters under this paragraph.

Article II, C of Trust provides that Trust shall terminate on whichever event occurs first (the "distribution date"); (i) the day before the end of twenty-one years after the death of the last to die of Settlers, and all Settlers' issue who are living as of Date 1; or (ii) the death of the person who is our last surviving issue. On the distribution date, the trustees shall distribute the remaining trust principal to our then living issue, *per stirpes*, or if none, to the estate of the last of our issue to die.

Article V(A)(5) of Trust provides that the trustees are empowered to make allocations, division, and distributions of trust property in cash or in kind, or partly in each; to allocate different kinds or disproportionate shares of property or undivided interests in property among the beneficiaries or separate trusts.

On Date 2, Husband created a revocable trust, Trust A. When Husband died on Date 3, Year 2, pursuant to the provisions of Trust A, Trust A assets equivalent to Husband's GST exemption were transferred to Trust. Date 3 is after October 22, 1986. It is represented that, Husband's GST exemption was automatically allocated to the Trust A assets to cause this transfer to have an inclusion ratio of zero. It is represented that there have been no additional contributions made to Trust since Date 3.

The trustees of Trust propose to divide Trust's assets into three separate equal trusts (Separate Trusts); where each Separate Trust will benefit each of the Settlers' three

daughters, Daughter 1, Daughter 2, Daughter 3, and that daughter's respective issue. Each Separate Trust will have the same provisions as Trust, except that it would be solely for the benefit of the daughter for which the trust is named and her issue. Each Separate Trust will be funded with one-third of each asset currently held by Trust and each Separate Trust will be subject to the same terms and conditions as Trust.

On Date 4, the trustees petitioned State Court to permit the division of Trust into three equal trusts. Under Statute, State Court has jurisdiction to partition Trust. On Date 5, State Court issued an order authorizing the trustees to separate Trust into three equal trusts, one for each daughter and that daughter's issue, so that each new trust would operate under the same terms and provisions as Trust, except as necessary to accomplish the division. State Court's order is conditioned upon the trustees obtaining a favorable private letter ruling.

You request the following rulings:

1. The proposed division of Trust into a Separate Trusts for each daughter and her issue will not alter Trust's inclusion ratio, which will remain the same for each of the Separate Trusts.
2. The proposed division of Trust into a Separate Trust for each daughter and her issue will not cause any portion of the assets of Trust or of the Separate Trusts to be includible in the gross estate of any beneficiary of any such trust under §§ 2035 through 2038.
3. The proposed division of Trust into a Separate Trust for each daughter and her issue will not constitute a transfer for gift tax purposes under § 2501.
4. The Separate Trusts for each daughter and her issue will be treated as separate taxpayers for federal income tax purposes pursuant to § 643(f).
5. The proposed division of Trust into a Separate Trust for each daughter and her issue will not result in any Trust property having been deemed paid, credited, or distributed for purposes of § 661 or § 1.661(a)-2(f) and therefore will not result in the realization by Trust or Separate Trusts, or by a beneficiary of any such trust, of any income, gain, or loss under §§ 661 and 662.
6. The proposed division of Trust into a Separate Trust for each daughter and her issue will not result in the realization of any income, gain or loss to Trust, Separate Trusts or a beneficiary of any such trust, under § 61 or 1001.
7. The proposed division of Trust into a Separate Trust for each daughter and her issue will result in each Separate Trust holding its share of Trust's

property with the same basis as it had when owned by Trust at the time of the division under § 1015.

Ruling #1:

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer. Section 2611(a) defines the term “generation-skipping transfer” as a taxable distribution, a taxable termination, and a direct skip.

Section 2631(a), as in effect for Year 1, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(a), as in effect in Year 2, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(c), as in effect for Year 2, provides that the GST exemption amount for any calendar year is equal to the applicable exclusion amount under § 2010(c) for each calendar year.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is defined as the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust, and the denominator of which is the value of the property transferred to the trust or involved in the 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 Regulation, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. 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)(1) 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.

Section 26.2601-1(b)(4)(i)(E), Example 5, considers a situation in which, in 1980, Grantor established an irrevocable trust for the benefit of his 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 state 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 distribution 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 example states that 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 beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, Trust and Trust A were created after September 25, 1985. It is represented that Trust, which includes the portion of Trust A that was transferred into Trust on Husband's death, has a zero inclusion ratio. No guidance has been issued concerning modifications that may affect the status of chapter 13 trusts that are exempt from GST tax because sufficient GST exemption was allocated to the trusts to result in an inclusion ratio of zero. At a minimum, a modification that would not affect the GST status of a non-chapter 13 trust should similarly not affect the exempt status of a chapter 13 trust.

The present case involves facts that are similar to Example 5 in § 26.2601-1(b)(4)(i)(E). The trustees of Trust propose to divide Trust's assets into three separate equal trusts (Separate Trusts); where each Separate Trust will benefit each of the Settlor's three daughters, Daughter 1, Daughter 2, Daughter 3, and that daughter's respective issue. Each Separate Trust will have the same provisions as Trust, except that it would be solely for the benefit of the daughter for which the trust is named and her issue. Each Separate Trust will be funded with one-third of each asset currently held by Trust and each Separate Trust will be subject to the same terms and conditions as Trust. Accordingly, based upon the facts submitted and representations made, we conclude the division of Trust into Separate Trusts will 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 beyond the period provided for in the original trust. Accordingly, based upon the facts submitted and representations made, we conclude that the proposed division of Trust into Separate Trusts for each daughter and her issue will not alter Trust's inclusion ratio, which will remain the same for each of the Separate Trusts.

Ruling #2:

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 shall include the value of all property to the extent of the interest therein of the decedent at the time of the decedent's death.

Section 2035(a) provides that if the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and the value of such property (or an interest therein) would have been included in the decedent's gross estate under § 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death, the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

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 provides generally that the value of the gross estate shall include the value of all property to the extent of any interest therein which the decedent has made a transfer, 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.

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 death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power) to alter, amend, revoke, or terminate, or when any such power is relinquished during the 3-year period ending on the date of the decedent's death.

In order for §§ 2035 through 2038 to apply to Daughters and their issue, the division would have to cause Daughters and their issue to be treated as transferors of the Trust assets. The division of Trust into Separate Trusts does not cause Daughters or their issue to become transferors of the assets of Trust for purposes of §§ 2035 through 2038. Accordingly, based upon the facts submitted and representations made, we conclude that the proposed division of Trust into a Separate Trust for each daughter and her issue will not cause any portion of the assets of Trust or of the Separate Trusts to be includible in the gross estate of any beneficiary of any such trust under §§ 2036-2038.

Ruling #3:

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the gift tax 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.

The division of Trust into Separate Trusts will not result in a transfer of property or of beneficial interests in Trust by Daughters or their issue for purposes of § 2511. Accordingly, based upon the facts submitted and representations made, we conclude that the proposed division of Trust into a Separate Trust for each daughter and her issue does not constitute a transfer for gift tax purposes under § 2501.

Ruling #4:

Section 643(f) provides that, for purposes of subchapter J of chapter 1 of subtitle A, under regulations prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1.

Separate Trusts will each have different primary beneficiaries. We conclude that as long as each Separate Trust created by the division of Trust is separately managed and administered, they will be treated as separate trusts for federal income tax purposes.

Ruling #5:

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662 provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Based solely on the facts submitted and representations made, we conclude that the division of Trust into Separate Trusts is not a distribution under § 661 or § 1.661(a)-2(f).

Ruling #6:

Section 61(a)(3) and (15) provides that gross income includes gains derived from dealings in property and income from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

The trustees of Trust propose to exercise the authority granted by the Trust document to the trustees to divide Trust into Separate Trusts. Thus, the division of Trust is a result of the exercise by the trustees of authority granted to the trustees under the terms of the trust document as construed by the State Court, not a result of the exchange of their interests in the Trust. Accordingly, no exchange has occurred. Based upon the facts submitted and representations made, we conclude that the proposed conversion will not result in realization of gain or loss under § 61 or 1001 to any beneficiary of the Trust.

Ruling #7:

Section 1015(a) provides that if the property was acquired by gift, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if the basis (adjusted for the period before the date of the gift as provided in § 1016) is greater than the fair market value of the property at the time of the gift then for the purpose of determining loss the basis shall be the fair market value.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by 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 in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by a transfer in trust, the basis applies whether the property be in the hands of the trustee, or the beneficiary, and whether acquired prior to the termination of the trust and distribution of the property, or thereafter.

Based on the facts submitted and representations made, we conclude that because § 1001 does not apply to the division of the trust assets, under § 1015 the basis of the trust assets will be the same after the modification and division of Trust as the basis of those assets before the modification and division.

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.

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,

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

Enclosure (2)

cc: