



On Date 1, a date prior to September 25, 1985, Grantor created an irrevocable trust, Trust. Trust was created for the primary benefit of Daughter, for her lifetime, and then to Granddaughter.

Paragraph 1 of Trust provides that trustee shall distribute the net income to or for the benefit of Daughter for her lifetime and, at her death, the trustee shall pay over so much of the income as the trustee may determine, in the trustee's sole discretion, to or for the benefit of Granddaughter until Granddaughter attains age 30. At such time as Granddaughter has attained age 30, but in no event prior to the death of Daughter, trustee shall pay over all corpus and income to Granddaughter, if living, and, if not living, to Granddaughter's issue, *per stirpes*, or if Granddaughter has no issue, to Granddaughter's siblings, *per stirpes*.

Grantor died on Date 2, survived by Daughter, Granddaughter, and two siblings of Granddaughter, Sibling 1 and Sibling 2.

Currently, Granddaughter is under a conservatorship due to severe medical issues which require constant attention and medical care. Granddaughter is an adult and over the age of 30. Granddaughter has no children. To address the issue of Granddaughter's immediate medical needs, Daughter and Granddaughter's conservator petitioned State Court on Date 3 to terminate Trust and distribute the trust estate, as permitted by Statute.

Under Statute, following the settlor's death, a noncharitable irrevocable trust may be terminated upon consent of all of the qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. Upon termination of a trust, the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

On Date 4, State Court issued an order terminating Trust. State Court determined that Daughter and Granddaughter were the "qualified beneficiaries" of Trust under state law and, as such, were the only parties necessary to consent to the termination of Trust. State Court further determined that the material purpose of Trust would in fact be fulfilled by terminating the trust. Under the order, the trust estate will be distributed to Daughter and Granddaughter, via her conservator, in accordance with the actuarial value of their respective interests in the trust estate, determined under § 7520 of the Internal Revenue Code (Code). The termination and final distribution are contingent on obtaining a favorable ruling from the Internal Revenue Service on the GST tax consequences of the termination and distribution of Trust.

You request a ruling that the termination of Trust and distribution of the trust estate pursuant to State Court's Date 4 order will not cause Trust, or any distributions from Trust, to become subject to GST tax under chapter 13 of the Code.

## LAW AND ANALYSIS

Section 2601 imposes a tax on every GST, which is defined under § 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) of the regulations, the 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 will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in this paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. 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 or the creation of a new GST.

In the present case, Trust was irrevocable on September 25, 1985, and it is represented that no additions (constructive or actual) have been made to Trust.

Based upon the facts submitted and the representations made, we conclude that the court-approved termination of Trust will neither cause a beneficial interest to be shifted to a beneficiary who occupies a generation lower than the beneficiaries who held the interests prior to the termination, nor extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original Trust. Accordingly, we

rule that the court-approved termination of Trust will not cause Trust, or any terminating distributions from Trust, to become subject to GST tax under chapter 13 of the Code.

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.

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,

*Karlene M. Lesho*

Karlene M. Lesho  
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Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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cc: