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Person To Contact:
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Refer Reply To:
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Date:
December 20, 2017

RE:

LEGEND

Date 1 =
Donor =
Trust =

Grandchild =
State 1 =
State 2 =
Great-Grandchild 1 =
Great-Grandchild 2 =
Great-Grandchild 3 =
Great-Grandchild 4 =
Great-Grandchild 5 =
Court =
Date 2 =
State 1 Statute 1 =
State 1 Statute 2 =
State 2 Statute 1 =
State 2 Statute 2 =
State 2 Statute 3 =
Individual Trustees =
Limited Trustee =

Dear :

This letter responds to your authorized representative's letter of August 29, 2016, requesting rulings regarding the income, estate, gift, and generation-skipping transfer (GST) tax consequences of the proposed division and modification of Trust.

FACTS

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Donor established an irrevocable trust, Trust, for the benefit of certain Individual Beneficiaries and Charitable Beneficiaries, described below. The current trustees are Individual Trustees and Limited Trustee. Trust is governed by the laws of State 1 and administered under the laws of State 2.

Section 3.02 provides that the payment of any benefits hereunder, whether of income, principal or otherwise, shall be vested in the sole discretion of the trustees from time to time. Amounts of net income, capital gains or other proceeds or amounts of principal not paid out to a beneficiary shall be accumulated and added to principal. Such payments among the members of a class of Individual Beneficiaries and Charitable Beneficiaries need not be equal either at the time of payment or at any future time and may be made to none, to one, to all or to any number of members of the class in any proportions both as between beneficiaries of the same class and as between Individual Beneficiaries and Charitable Beneficiaries, all as determined by the trustees, in their sole discretion.

Section 3.03 provides that payments of income, principal or otherwise hereunder at any time may be made to any one or more members of the lowest numbered of the classes of Individual Beneficiaries which has one or more representative members then living and eligible to receive benefits and/or to any one or more members of the class of Charitable Beneficiaries described in Section 3.03(2).

Section 3.03(1) provides that the primary potential Individual Beneficiaries consist of Class One, which includes the issue of Grandchild, who are then living, all spouses of the then living issue of Grandchild, and all spouses of the then deceased issue of Grandchild. Section 3.03(2) describes the Charitable Beneficiaries as one or more of a group selected by the trustees, in their sole discretion, from time to time, consisting of organizations that are described in § 501(c)(3). In the event there are no living members of Class One, Section 3.03(1) identifies and defines the membership of several other classes of beneficiaries, consisting of Donor's immediate and extended family and certain other individuals who, in addition to the Charitable Beneficiaries, would thereupon be eligible to receive distributions from Trust.

Section 4.01 provides that any trust assets governed by a statute or rule of law of the situs of the trust, under which statute or rule duration of the trust or any suspension of the power of alienation legally adjudged to occur would render the trust invalid, shall be distributed on the last date on which said assets can validly remain in trust (and in the event such governing statute or rule depends upon specified lives in being, the Donor's intent would be to name the lives of all persons described as potential Individual

Beneficiaries in Classes One to Six, as they would be determined at the date of the execution of Trust, and if a number of such lives less than all must be used, they should be selected in order of least age, taking the youngest first). If termination and distribution is required by the foregoing sentence by reason of the existence of the trust for the benefit of potential Individual Beneficiaries, then as to any assets affected it shall then terminate as to potential Charitable Beneficiaries as well.

Under Section 4.05, all determinations to make, apply, withhold or accumulate any discretionary payments or distributions of income and principal from any trust shall be made only by the trustees then acting who are not contributors to the trust or "related or subordinate parties" as to Donor or any other contributor to Trust or as to Grandchild or to Donor's other three grandchildren within the meaning of § 672(c) and who are not within the definition of Individual Beneficiaries and Charitable Beneficiaries eligible at the time of the determination.

Article 5, Section 5.04(9) authorizes the trustees to divide the trust, determining values and designating particular assets for beneficiaries, to assign like or unlike properties to different beneficiaries or trusts, to create or hold undivided interests in any property of the trust, and to make distributions and payments in cash or in kind or both.

There are presently six living members of Class One. Grandchild has five children: Great-Grandchild 1, Great-Grandchild 2, Great-Grandchild 3, Great-Grandchild 4, and Great-Grandchild 5. Great-Grandchild 1, Great-Grandchild 3, Great-Grandchild 4, and Great-Grandchild 5 are not married and have no issue. Great-Grandchild 2 is married and has no issue.

The trustees of Trust petitioned Court to divide Trust into five separate trusts, referred to as Divided Trusts. Subject to adjustments in order to equalize the shares for distributions previously made from Trust to certain of the Individual Beneficiaries, the trustees will allocate and distribute Trust assets equally among the five Divided Trusts. Each Divided Trust will be for the primary benefit of the class consisting of: one child of Grandchild (Great-Grandchild 1 through 5), the spouse of that child, the living issue of that child, the respective spouses of the issue of that child (Great-Grandchild Family Line), and Charitable Beneficiaries.

Trustees will allocate and divide Trust's primary asset, shares of a closely-held corporation, equally among the five Divided Trusts. Also, Trustees will allocate and divide Trust's general partner interests equally among the five Divided Trusts and allocate and divide the other assets of Trust among the Divided Trusts in such amounts and proportions as is necessary in order for the total value of the assets allocated between and among the Divided Trusts to be equal after taking into account certain discretionary distributions made from Trust to the children of Grandchild prior to the division.

The dispositive provisions of each Divided Trust are the same in all material respects as the dispositive provisions of Trust, except that Class One of each Divided Trust will be defined to include only individuals in a Great-Grandchild's Family Line (Family Line). If at any time there is no living member of a particular Family Line, the Divided Trust administered for the benefit of that Family Line will terminate and the remaining assets will be allocated and distributed equally to and among such of the other Divided Trusts with living members.

If Grandchild has further children, the trustees of each Divided Trust then administered will distribute to a new Trust for the benefit of the new Great-Grandchild's Family Line a fraction of its assets and liabilities equal to one divided by the number of Divided Trusts then being administered plus one. Any assets or liabilities previously distributed from any Divided Trust will not be taken into account.

On Date 2, Court issued an order that authorized the trustees to divide Trust upon the receipt of a favorable private letter ruling from the Internal Revenue Service.

It is represented that no actual or constructive additions were made to Trust after September 25, 1985.

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 any of Grandchild's children or any member of their respective Family Lines to be treated as having made any transfer subject to the gift tax.
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 any of Grandchild's children or any member of their respective Family Lines for purposes of the estate tax.
4. The allocation of the assets and liabilities of Trust in approximately equal shares as described herein, whether done on a pro rata or non-pro rata basis, will not cause Trust, the Divided Trusts, the children of Grandchild, or any member of their respective Family Lines to recognize any ordinary income or loss or capital gain or loss for income tax purposes.
5. 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; and
6. 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).

LAW AND ANALYSISRuling 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. 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 generation-skipping transfer tax purposes. Thus, generally, 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.

Under State 1 Statute 1 a trustee may divide a trust into two or more separate trusts. The statute requires notice to the beneficiaries and the division may not impair the rights of any beneficiary or adversely affect the purposes of the trust.

Under State 1 Statute 2 a trustee may petition the court for an order to construe or reform the terms of a trust.

Under the laws of State 2, an irrevocable trust may be modified or terminated if continuance of the trust is not necessary to carry out a material purpose of the trust. The statute requires consent of all of the beneficiaries. State 2 Statute 1. A State 2 court may affirm a modification made pursuant to State 2 Statute 1. State 2 Statute 2. A trustee may divide a trust into two or more separate trusts as long as the division will not impair the rights of any beneficiary or substantially affect the purposes of the trust. State 2 Statute 3. Under this statute, a court may affirm the division.

In this case, Trust will be divided into five Divided Trusts. The proposed provisions of the five Divided Trusts will be the same in all material respects as the provisions of Trust, except that Class One of each Divided Trust will include only one Great-Grandchild's Family Line. The proposed division and modification of Trust 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 of Trust 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, 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, the beneficiaries of each Divided Trust will have substantially the same interests after the proposed division that they had as beneficiaries under Trust prior to the division. Because the beneficial interests, rights, and expectancies of the beneficiaries are substantially the same, both before and after the proposed division and modification, 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, as described above, will not cause any of Grandchild's children or any member of their respective Family Lines to be treated as having made any transfer subject to federal gift tax.

Ruling 3

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 2035(a) provides that if (1) 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 (2) 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 the decedent's 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(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.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

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 beneficiaries of the Divided Trusts will have the same interests after the division that they had as beneficiaries under Trust. The distribution, management, and termination provisions of each Divided Trust will be substantially similar to the current distribution, management, and distribution provisions of Trust.

In addition, no beneficiary who is acting as a trustee has any power to participate in discretionary distributions of income or principal. Discretionary distributions can only be made by trustees who are not related or subordinate to Donor or Grandchild. No beneficiary has a power to appoint trust assets to themselves, their estates, their creditors, or the creditors of their estates under either Trust or Divided Trusts. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division and modification will not cause any portion of the assets of the Divided Trusts to be includible in the gross estate of any of Grandchild's children or any member of their respective Family Lines for purposes of the estate tax.

Rulings 4 and 6

Section 61(a)(3) provides that gross income includes gains derived from dealings in property and, under § 61(a)(15), 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) of the Income Tax Regulations 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 transfer of assets from Trust to the Divided Trusts will be made under the authority granted to the trustees under the express terms of the trust document. Thus, the beneficiaries do not acquire their interests in the Divided Trusts as a result of the exchange of their interests in Trust, but instead by reason of the exercise of the trustee's existing authority to make distributions in further trust.

Accordingly, based on the facts submitted and the representations made, we conclude that the allocation of the assets and liabilities of Trust in approximately equal shares as described herein, whether done on a pro rata or non-pro rata basis, will not cause Trust, the Divided Trusts, the children of Grandchild, or any member of their respective Family Lines to recognize any ordinary income or loss or capital gain or loss for income tax

purposes. In addition, 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 5

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.

In this case, § 1001 does not apply to the proposed transaction. Accordingly, based on the facts submitted and the representations made, we conclude that after the proposed division and modification 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.

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,

Lorraine E. Gardner

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

Enclosures (2)
Copy for § 6110 purposes
Copy of this letter

cc: