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1223.00-00, 2601.00-00

Person To Contact:
, ID No.

Telephone Number:

Re:

Refer Reply To:
CC:PSI:4
PLR-119283-20

Date:
March 03, 2021

Legend

- Trust 1 =
- Trust 2 =
- Grantor 1 =
- Grantor 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- State =
- x =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- State Law 1 =
- State Law 2 =
- Court 1 =
- Court 2 =
- Partial Judgment =

Dear _____ :

This responds to your authorized representative's letter dated August 26, 2020, and subsequent correspondence, in which you request rulings concerning the income tax and generation-skipping transfer (GST) tax consequences of a division and modification of Trust 1.

FACTS

The facts and representations submitted are as follows:

On Date 1, Grantor 1 and Grantor 2 established Trust 1, an irrevocable trust for the benefit of Grantors' descendants. In each of Year 1 through Year 4, Grantor 1 and Grantor 2 transferred cash and/or property to Trust 1. Grantor 1 and Grantor 2 allocated GST exemption to all transfers to Trust 1 on timely filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Trust 1 holds member interests and limited partner interests in entities that own passive investments and non-operated oil and gas working interests and related royalty interests. Trust 1 is administered under the laws of State.

Article III, section 3.1 of Trust 1 provides that the trustees, in their sole and absolute discretion, may distribute to Grantors' descendants the principal and income of Trust 1 for support, maintenance, health, and education. In addition, subject to the provisions of section 7.17, an Independent Trustee, or majority of the trustees qualifying as an Independent Trustee under § 674(c) of the Internal Revenue Code (Code), may distribute to Grantors' descendants so much of the trust estate, both principal and income, as the trustee shall determine. Section 3.2 provides each descendant of Grantors a limited right to withdraw; such right takes priority over distributions under section 3.1.

Article IV, section 4.1 of the trust instrument provides that upon the death of the last to die of Grantor 1 and Grantor 2, the trustee shall divide Trust 1 into x separate trusts of equal value, one for the benefit of each child of Grantors and that child's descendants. If a child (or his or her descendants) receives distributions pursuant to section 3.1, the value of the property distributed under section 3.1 shall be included in the value of the trust created for that child for purposes of determining the value of the child's trust under section 4.1. If a child dies without descendants prior to the date of death of the last to die of Grantor 1 and Grantor 2, the deceased child's share shall be allocated pro rata among the other trusts created under section 4.1. If, after the death of the last to die of Grantor 1 or Grantor 2, either (A) a child for whom a trust is created dies without descendants, or (B) the descendants of such child die without descendants, that trust will terminate and the trust estate shall be distributed in accordance with section 4.4.

Section 4.2 provides that, following the division in section 4.1, the trustees, in their sole and absolute discretion, may distribute the principal and income of a separate trust to

the child for whom the separate trust was created and the child's descendants for support, maintenance, health and education. In addition, an Independent Trustee, as defined in § 674(c) of the Code, may distribute to the child and the child's descendants so much of the trust estate, both principal and income, as the trustee shall determine.

Section 4.3 provides that except as otherwise provided in section 4.1, the trusts created under the governing instrument of Trust 1, shall terminate twenty (20) years after the date of death of the last survivor of the descendants of Grantors' parents who are alive on the date of execution of Trust 1.

Section 4.4 provides that following the termination of Trust 1, the trust estate shall be allocated and distributed:

(A) In equal shares, *per stirpes*, to the then living descendants of the child for whom such trust was created.

(B) If a child for whom such trust was created dies prior to the termination of such trust without descendants, such trust estate shall be distributed to such one or more members of a group consisting of Grantors' descendants or trusts for the benefit of Grantors' descendants in such manner, and proportions as such child may appoint by will by making special reference to this power in such will.

(C) If a child for whom such trust was created dies prior to the termination of such trust without descendants and such trust estate is not effectively appointed, such trust estate shall be distributed in equal shares to the remaining trusts created under the governing instrument of Trust 1 for the benefit of Grantors' other children.

(D) If the trusts created under the governing instrument of Trust 1 for the benefit of Grantors' other children no longer exist, such trust estate shall be distributed in equal shares, *per stirpes*, to the Grantors' descendants.

(E) If none of the Grantors' descendants are alive at the termination of a trust, the trust estate shall be distributed to the Grantors' heirs.

Article V provides that the trustee of Trust 1 may distribute to a contingent trust any portion of Trust 1 which, upon termination, would be distributable to a beneficiary (including an heir) who is under twenty-one (21) years of age. The trustee of such a trust may make discretionary distributions to the beneficiary of principal and income for support, maintenance, health, or education. The contingent trust will terminate when the beneficiary reaches twenty-one (21) years of age. Upon termination, the trust estate shall be distributed to the beneficiary, if living, or to his heirs as part of his probate estate.

Article VII, section 7.1 of the trust agreement establishes the original trustees of Trust 1. Section 7.1(A) provides for the appointment of successor trustees if the original trustees

should fail, cease, or refuse to act as a trustee of Trust 1. Section 7.1(B) provides for the appointment of trustees following the division of the Taxpayer into x trusts pursuant to section 4.1.

Article IX, section 9.3 provides that the term "Descendants" means the legitimate children of the person designated and the legitimate lineal descendants of such children, and includes any person adopted before attaining age eighteen (18) and the adopted person's legitimate lineal descendants. A posthumous child shall be considered as living at the death of his or her parent. Upon termination of Trust 1, whenever a distribution is to be made to the descendants of any person, or whenever a trust estate is to be divided into shares for the descendants of any person, the property being distributed or divided shall be divided into as many shares as there are then living children of a person and deceased children of the person who left descendants who are then living. Each living child (if any) shall take one share and the share of each deceased child shall be divided among his or her then living descendants in the same manner.

State Law 1 provides that a trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts.

State Law 2 provides in subsection (a) that on petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if: (1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill; (2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust; (3) modification of administrative, non-dispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration; (4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or (5) subject to subsection (d): (A) continuance of the trust is not necessary to achieve any material purpose of the trust; or (B) the order is not inconsistent with a material purpose of the trust. Subsection (d) provides that the court may not take the action permitted by subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order.

On Date 2, Grantor 1 died. Grantor 1 is survived by Grantor 2, their x children, and grandchildren, and a great-grandchild. As Grantors' family has grown in number and has become more diverse, the financial needs and objectives of the Trust 1 beneficiaries have diverged. The current beneficiaries of Trust 1 have agreed that it is in their collective best interest for Trust 1 to be divided into x separate and independent trusts, one for the benefit of each child of Grantors and that child's descendants, prior to the death of Grantor 2 (Early Division). The governing instrument of Trust 1 does not prohibit the Early Division of Trust 1.

On Date 3, the trustees and current beneficiaries of Trust 1, together with other interested parties, entered into an agreement (Settlement Agreement) in which all parties agreed to take all actions necessary to accomplish the Early Division. In accordance with the Settlement Agreement, on Date 4, the trustees of Trust 1 petitioned Court 1 to approve the Early Division, and related modifications to sections 4.1, 4.3, 4.4 of Trust 1, modification of section 7.1 (related to the appointment of co-trustees and successor trustees), and addition of a new section 7.1A (related to the appointment of an Investment Trustee). On Date 5, the trustees' petition was transferred to Court 2 to be consolidated with a pending case regarding Trust 2. On Date 6, the trustees amended their petition to include a request that Court 2 declare the Settlement Agreement valid and enforceable.

On Date 7, Court 2 issued Partial Judgment. The Partial Judgment approves the Early Division, modification of section 7.1, and addition of a new section 7.1A. In addition, Partial Judgment provides for the following amendments to Trust 1:

(1) Section 4.1 is amended to provide for the division of Trust 1 into x separate trusts upon the earlier of an Early Division (as later defined in section 4.1) or the death of the last to die of Grantor 1 and Grantor 2. In addition, a new paragraph is added at the end of section 4.1 and immediately preceding section 4.2, to provide that, notwithstanding the other provisions of Trust 1 including section 4.1, if the trust estate is divided into separate and distinct trusts for the benefit of each of Grantors' children and their respective descendants prior to the death of the last of Grantor 1 and Grantor 2 to die (Early Division), the trust estate shall not be further divided as a result of the death of the last to die of the Grantors, and any reference to a division of a trust pursuant to section 4.1 or upon the death of the last of Grantor 1 and Grantor 2 to die shall instead reference the Early Division; provided, however, such an Early Division shall not (a) delay the vesting of a beneficial interest in the trust estate, or (b) shift a beneficial interest in the trust estate to any beneficiaries who occupy a lower generation than the person or persons who held the beneficial interest prior to the Early Division. For example, a primary beneficiary's exercise of his or her testamentary power of appointment set forth in section 4.4(B) shall not be effective if the primary beneficiary does not survive both Grantor 1 and Grantor 2.

(2) Section 4.3 is amended to provide that the separate trusts created under Article IV shall terminate upon the death of the primary beneficiary for whom such trust was created. Notwithstanding any other provision of Trust 1, the trusts created under Trust 1 shall terminate no later than twenty (20) years after the date of death of the last survivor of the descendants of Grantors' parents who are alive on the date of execution of this agreement, at which point the remaining trust estate of each of the trusts shall be distributed, outright and free of trust, to the respective primary beneficiaries of such trusts.

(3) Section 4.4 is amended to provide that, except as otherwise provided, following the death of the primary beneficiary for whom such trust was created, the trust estate shall be distributed:

(A) To that person's descendants (to be divided in the manner set forth in section 9.3), subject to the provisions of section 4.4(F) below.

(B) If the primary beneficiary for whom such trust was created does not have descendants then living, such trust estate shall be distributed to such one or more members of a group consisting of Grantors' descendants or trusts for the benefit of Grantors' descendants in such shares, manner, and proportions as such primary beneficiary may appoint by will making specific reference to this power in such will.

(C) If the primary beneficiary for whom such trust was created does not have descendants then living, such person was a descendant of the Grantors, and such trust estate is not effectively appointed, then such trust estate shall be distributed to the descendants of that person's nearest ancestor who was one of Grantors' descendants and who has descendants then living, subject to the provisions of section 4.4(F).

(D) If none of these persons are then living, to Grantors' descendants (to be divided in the manner set forth in section 9.3), subject to the provisions of section 4.4(F).

(E) If none of the Grantors' descendants are alive at the termination of a trust, the trust estate shall be distributed to the Grantors' heirs, subject to the Contingent Trust provisions of Article V.

(F) Subject to a beneficiary's exercise of a power of appointment as set forth above, any portion of a trust estate that, upon the termination of Trust 1, would be distributable to a beneficiary that is the primary beneficiary of a trust governed by this agreement then in existence instead shall be distributed to the trustee of such trust as an addition to its trust estate. In addition, subject to a beneficiary's exercise of a power of appointment as set forth above, any portion of a trust estate that, upon the termination of Trust 1 would be distributable to one of Grantors' descendants for whom no trust governed by this agreement is then in existence instead shall be retained by the trustee as the initial trust estate of a separate trust for such beneficiary, and such trust shall also be governed by the provisions of Article IV.

The Partial Judgment will become effective upon entry of a final judgment, and the trustees of Trust 1 represent that Trust 1 will not be divided until Court 2 enters a final judgment. In addition, the trustees represent that Trust 1 currently has an inclusion ratio of zero for GST tax purposes, that all previous distributions from Trust 1 have been

made on a pro-rata basis to each of the x family lines, and that the assets of Trust 1 are to be allocated to the newly-created trusts on a pro-rata basis. Moreover, the trustees represent that the interests of the beneficiaries of Trust 1 will not be materially altered by the division of Trust 1 into the newly-created trusts, that each newly-created trust will have different primary beneficiaries, and that each newly-created trust will be separately managed and administered.

RULINGS REQUESTED

1. The pro-rata transfer of assets from Trust 1 into the newly-created trusts will not result in treating any property of Trust 1 as paid, credited, or distributed for purposes of § 661 or § 1.661-2(f), and thus will not result in the realization of any income, gain, or loss under § 661 or § 662 by Trust 1, the newly-created trusts, or a beneficiary of any of the trusts.
2. The pro-rata transfer of assets from Trust 1 into the newly-created trusts will not result in the realization of any income, gain, or loss to Trust 1, the newly-created trusts, or a beneficiary of any of the trusts under § 61 or § 1001.
3. The newly-created trusts will be treated as separate trusts for federal income tax purposes pursuant to § 643(f).
4. The tax basis that the newly-created trusts will have in the assets of Trust 1 immediately after the transfer of such assets from Trust 1 will be the same as the tax basis of Trust 1 in such assets immediately before the transfer.
5. Each historic asset of Trust 1 will have the same holding period immediately after the transfer to the newly-created trusts that it had immediately before the transfer.
6. On the division of Trust 1 into the newly-created trusts, each of the newly-created trusts will succeed to and take into account an equal portion of any net operating loss carryforward, net capital loss, and other tax attributes including passive activity losses and credit carryforwards and statutory depletion deductions, of Trust 1. Each asset transferred by Trust 1 to the newly-created trusts will have the same tax attributes immediately after the division that it had immediately before the division.
7. The GST tax exempt status of Trust 1 under chapter 13 of the Code will not be affected by either (a) the Early Division of Trust 1, or (b) the modification of Trust 1.

RULINGS 1 & 2

Section 61(a) defines gross income as all income from whatever source derived.

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 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.

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) provides 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.

Section 1.1001-1(h)(1) provides that the severance of a trust (including without limitation a severance that meets the requirements of § 26.2642-6 or of § 26.2654-1(b) of this chapter) is not an exchange of property for other property differing materially either in

kind or in extent if -- (i) An applicable state 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 statute or governing instrument.

A 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 of the transaction. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56-437, 1956-2 C.B. 507.

Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), addresses the issue of when a sale or exchange has taken place that results in the realization of gain or loss under § 1001. In Cottage Savings, a financial institution exchanged its interests in one group of residential mortgage loans for another lender's interests in a different group of residential mortgage loans. The two groups of mortgages were considered "substantially identical" by the agency that regulated the financial institution.

Consequently, based on the facts submitted and the representations made, the pro-rata transfer of assets from Trust 1 to the newly-created trusts will not result in a sale or exchange, or other disposition, of any property for purposes of § 1001(a), and thus no gain or loss will be recognized by the beneficiaries or the trusts on the division for purposes of § 61(a)(3) or § 1001(c). We further conclude that the pro-rata transfer of assets from Trust 1 to the newly-created trusts is not a distribution under § 661 or § 1.661(a)-2(f) and therefore not included in the gross income of any newly-created trust beneficiary under § 662. It is consistent with the Supreme Court's opinion in Cottage Savings to find that the interests of the beneficiaries, after a pro-rata distribution, of the newly-created trusts do not materially differ from the interests in Trust 1.

RULING 3

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.

Section 1806(b) of the Tax Reform Act of 1986 provides that § 643(f) shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust that was irrevocable on March 1, 1984, it shall apply only to that portion of the trust that is attributable to contributions of corpus after March 1, 1984.

It is represented that the newly-created trusts will each have different beneficiaries. We conclude that as long as the newly-created trusts created by the pro-rata transfer of

assets from Trust are separately managed and administered, they will be treated as separate trusts for federal income tax purposes.

RULINGS 4, 5 & 6

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 1015(b) provides that if property is acquired after December 31, 1920, by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be 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 such transfer.

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 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 transfer in trust, this basis applies whether the property is in the hands of the trustee or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which such property was held by any other person, if under chapter 1 of subtitle A 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 such other person. See also § 1.1223-1(b).

Based on the facts submitted and the representations made, we conclude that because § 1001 does not apply to the pro rata transfer of assets from Trust 1 into the newly-created trusts, under § 1015 the basis of the newly-created trust assets will be the same after pro-rata transfer of assets from Trust 1 as the basis of those assets before the transfer. We further conclude that each asset transferred by Trust 1 to the newly-created trusts will have the same holding period in the hands of the newly-created trusts as it had in Trust 1. Finally, we conclude that on the division of property from Trust 1 to the newly-created trusts, the newly-created trusts will succeed to and take into account, pro-rata, any net operating loss carryforward, net capital loss, and other tax attributes, including passive activity losses, credit carryforwards, and statutory depletion deductions, of Trust 1.

RULING 7

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST) made by a “transferor” to a skip person.

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 GSTs made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the tax does not apply to a transfer from a trust if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date.

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

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. The regulation provides that the rules contained in the paragraph are generally applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless the regulations specifically provide otherwise, 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 capital 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 by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the tax 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. A modification that is administrative in nature that only indirectly increases the amount transferred will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, describes a situation where, 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 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 example concludes 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 in the trust 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 § 26.2601-1(b)(4)(i)(E), Example 10, considers the following situation: In 1980, grantor established an irrevocable trust for the benefit of grantor's issue, naming a bank and five other individuals as trustees. In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and 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. In addition, 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. Therefore, the trust will not be subject to the provisions of chapter 13.

No guidance has been issued concerning judicial modifications that may affect the status of trusts that are exempt from GST tax because sufficient GST exemption was allocated to the trust to result in an inclusion ratio of zero. At a minimum, a modification that would not affect the GST status of a grandfathered trust should similarly not affect the exempt status of such a trust.

In this case, the division and modifications to sections 4.1, 4.3, and 4.4 are similar to those in Example 5 of § 26.2601-1(b)(4)(i)(E). The Early Division of Trust 1 will result in x newly-created trusts, one for the family line of each child of Grantor 1 and Grantor 2. After the division and modification: (i) section 4.2, which governs distributions during the lifetime of each child and more remote descendant of Grantors, is the same as in the original Trust 1, although limited to a family line; (ii) under section 4.3, each newly-created trust (and trusts created under the terms of each newly-created trust) will terminate no later than Trust 1 terminates under its original terms; and (iii) under section 4.4, which governs distributions at the death of a child and more remote descendants of Grantors, the distributees of property on termination of each newly-created trust (and

trusts created under the terms of each newly-created trust) will be the same as the distributees of property under the original terms of Trust 1. Thus, the Early Division of Trust 1 and pro-rata allocation of Trust 1 assets among the x newly-created trusts will not shift a beneficial interest in Trust 1 to any beneficiary who occupies a lower generation than the person or persons who held the beneficial interest prior to the Early Division. In addition, the Early Division will not extend the time for the vesting of any beneficial interest in the newly-created trusts beyond the period provided for the vesting of that beneficial interest under the original terms of Trust 1.

The modification to section 7.1 and the addition of section 7.1A resemble those in Example 10 of § 26.2601-1(b)(4)(i)(E). The modification and addition pertain to the administration of Trust 1 and do not shift a beneficial interest in Trust 1 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 addition. Furthermore, the modification and addition do not extend the time for vesting of any beneficial interest in Trust 1 beyond the period provided for under the original terms of Trust 1.

Accordingly, based on the facts submitted and the representations made, the division of Trust 1 in accordance with Partial Judgment into the x newly-created trusts and the pro-rata allocation of Trust 1 assets will not affect the status of Trust 1 or the newly-created trusts as exempt from the GST tax. Likewise, neither the division nor the pro-rata allocation of assets will cause a distribution from, or termination of any interest in Trust 1 or any of the newly-created trusts to be subject to the GST tax.

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.

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) 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.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: