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Legend

Date 1  
Date 2  
Year 1  
Year 2  
Husband  
Wife  
Trust A

Trust B

Trust WB

Trustee  
a  
b  
c  
d  
e  
State

Dear :

This letter responds to your authorized representative's letter, dated November 2, 2021 and other correspondence, requesting a generation-skipping transfer (GST) tax ruling regarding the proposed merger of certain trusts.

The facts and representations made are as follows:

On Date 1, Husband and Wife (collectively, "Grantors") established Trust A. The Grantors each made gifts of \$a of property to Trust A. In Year 1, each Grantor timely filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the transfer to Trust A and allocated \$a in GST tax exemption to Trust A. As a result of the allocations, Trust A has an inclusion ratio of zero at the date of the transfer.

Paragraph 1.01 of Trust A provides that the trustee, within its sole discretion, may pay as much of the net income and/or trust principal as trustee from time to time considers advisable for the general health, education and higher education of any one or more of Grantors' issue living from time to time, in all degrees. All distributions shall be made according to the needs of the various beneficiaries rather than equally among them.

Paragraph 1.03 provides that when the Grantors' then youngest living great-grandchild (living at the time of the death of the last Grantor) attains age d, the initial Trust estate is to be divided into equal trust shares. One trust share for each of Grantors' then living great-grandchildren and one trust share for each of Grantors' then living great-great-grandchildren. Each such great-grandchild or great-great-grandchild is to be a trust share beneficiary of his or her trust share as created hereunder.

Paragraph 1.05 provides, in relevant part, that where there is a division of the initial trust into trust shares under paragraph 1.03, each such trust share shall be further held, administered, and distributed to and for the benefit of the trust share beneficiary as follows: The trustee shall have discretion to distribute to the trust share beneficiary the entire net income from the appropriate trust share, or so much thereof from time to time, for the beneficiary's health, support, maintenance, education and/or higher education, and the same may be paid over and distributed to the trust share beneficiary at least quarterly. If a trust share beneficiary has attained age e, the trust share net income shall be paid over and distributed to the beneficiary quarter-annually. During the administration of a trust share, to or for the benefit of a trust share beneficiary, the trustee may, within the sole discretion of the trustee, distribute trust principal to a trust share beneficiary according to the standards and/or directions set forth under paragraph 1.01.

After reaching age d, the trust share beneficiary may withdraw any part or all of the trust share. If a trust share beneficiary dies before receiving the final distribution of his/her trust share and leaves lineal issue surviving, the trust share of the deceased trust share beneficiary will be further divided into equal trust shares for each of the then surviving children of the deceased trust share beneficiary. If the trust share beneficiary dies before receiving the final distribution of his/her share and leaves no children surviving, but leaves siblings surviving, the share of the deceased trust share beneficiary will be divided into equal shares for the number of siblings then surviving. If the trust share beneficiary dies before receiving the final distribution of his/her share

and leaves no children and siblings surviving, the share of the deceased trust share beneficiary will be divided into equal shares for the then surviving great-grandchildren and great-great-grandchildren and, if the trust share beneficiary is age d or older, the trust share shall be distributed outright.

Paragraph 1.07 provides that no trust property shall be construed to remain held in trust beyond the period permitted by applicable law.

Paragraph 5.06 provides that the trustee may transfer property of a trust to, or receive property from, the trustees of any trust with substantially similar provisions for the same beneficiaries, for purposes of merging the trusts.

On Date 1, the Grantors established Trust B. The Grantors each made gifts of \$b of property to Trust B. In Year 1, each Grantor timely filed a Form 709 for the transfer to Trust B and allocated \$b in GST tax exemption to Trust B. As a result of the allocations, Trust B has an inclusion ratio of zero at the date of the transfer. The distribution, dispositive, termination, and trustee power provisions of Trust B are substantially identical to those of Trust A.

On Date 2, Grantors executed Trust WB. The Grantors each made gifts of \$c of property to Trust WB. In Year 2, each Grantor timely filed a Form 709 for the transfer to Trust WB and allocated \$c in GST tax exemption to Trust WB. As a result of the allocations, Trust WB has an inclusion ratio of zero at the date of the transfer. The distribution, dispositive provisions, and trustee power provisions are substantially identical to those of Trust A. The termination provision under paragraph 8 provides that the trust shall last in perpetuity for the benefit of Grantors' descendants.

Trustee is serving as the current trustee of all of the Trusts. All of the trusts are irrevocable. All of the trusts are administered in State. The beneficiaries are identical for all trusts.

Trustee proposes to merge Trust WB and Trust B into Trust A. After the merger, Trust WB and Trust B will terminate and the provisions of Trust A will apply to all property held in Trust A. It is represented that the reason for the merger is to save administrative costs and enhance the management of the trusts' investments.

You have requested the following ruling:

The proposed merger of Trust WB and Trust B into Trust A will not affect the present GST tax exempt status of such trusts and will not cause any distributions (upon termination or otherwise) from Trust A to beneficiaries to become subject to the GST tax.

LAW AND ANALYSIS

Ruling

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 2602, the amount of GST tax is the taxable amount multiplied by the applicable rate. Under § 2641, the applicable rate means the product of the maximum federal estate tax rate, and the inclusion ratio (defined under § 2642) with respect to the transfer. Under § 2631(a), for purposes of determining the inclusion ratio, in Year 1, every individual shall be allowed a GST exemption of \$1 million (adjusted for inflation) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. In Year 2, the GST amount was determined under §2631(c). Any allocation under §2631(a), once made, is irrevocable.

In this case, Grantors allocated sufficient GST exemption in Years 1 and 2 to the transfers to the trusts to cause the inclusion ratio for each trust to equal zero. No guidance has been issued under chapter 13 concerning changes, such as a merger, that may affect the status of trust that is 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 change that would not affect the GST status of a grandfathered trust should similarly not affect the exempt status of such a trust. Accordingly, the merger must meet the requirements of § 26.2601-1(b)(4)(i)(A), (B), (C), or (D) in order for Trust A to retain its GST exempt status with respect to all properties held in Trust A subsequent to the merger.

Under § 1433 of the Tax Reform Act of 1986 (Act), 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 Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, provided no additions (actual or constructive) were made to the trust after that date.

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. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. 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 (including a trustee distribution, settlement, or construction that does not satisfy paragraph (b)(4)(i)(A), (B), or (C) of this section) 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.

Example 6 of § 26.2601-1(b)(4)(ii)(E), considers a situation where the grantor, in 1980, establishes an irrevocable trust for grantor's child and the child's issue. In 1983, grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the 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 merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Therefore, the example concludes that the trust that resulted from the merger will not be subject to the provisions of chapter 13.

In this case, the beneficiaries of each trust are identical and the distribution, dispositive, and trustee power provisions of each trust are substantially similar. The termination provisions of Trust A and Trust B are identical. Under Paragraph 1.07, no trust property shall be construed to remain held in trust beyond the period permitted by applicable State law. The termination provisions of Trust WB would allow the trust to remain in existence in perpetuity. Pursuant to the merger of Trust WB and Trust B into Trust A, Trusts WB and B will terminate and the termination provisions of Trust A will apply to all property transferred from Trust WB and Trust B. Accordingly, the merger will 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.

Accordingly, based on the information submitted and the representations made, we conclude that the proposed merger of Trust WB and Trust B into Trust A will not affect the present GST tax exempt status of such trusts and will not cause any distributions (upon termination or otherwise) from Trust A to beneficiaries to become subject to the GST tax.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter including the gift tax consequences.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

*Lorraine E. Gardner*

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

Enclosure:  
Copy for § 6110 purposes

cc: