

Internal Revenue Service

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Person To Contact: ID No.

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Date:
October 07, 2022

Legend

- Trust A =
- Trust B =
- Grantor =
- Grantor's Spouse =
- Son =
- Son's Spouse =
- Daughter =
- Daughter's Spouse =
- Grandchild 1 =
- Grandchild 2 =
- Grandchild 3 =
- Grandchild 4 =
- Grandchild 5 =
- GGC 1 =
- GGC 2 =
- GGC 3 =
- GGC 4 =
- GGC 5 =
- GGC 6 =
- GGC 7 =
- GGC 8 =
- GGC 9 =
- GGC 10 =
- GGGC 1 =
- GGGC 2 =
- Date 1 =
- Date 2 =

Date 3 =
 Date 4 =
 State 2 Statute =
 State 1 =
 State 2 =
 Trust Company =
 Court =
x =
y =

Dear :

This letter responds to your authorized representative’s letter dated March 22, 2022, requesting a ruling concerning the federal generation-skipping transfer (GST) and estate tax consequences of the proposed modification of Trust A.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Grantor established and funded an irrevocable trust, Trust A, for the benefit of his descendants. Trust A is administered under the laws of State 1.

Section 2 of Trust A provides, in relevant part, that the trustee is to pay all or such part of the net income or principal of Trust A, or both, to Son, Daughter, the spouses of Son and Daughter, and the issue of Son and Daughter at such times and in such proportions as the trustee in its sole discretion deems advisable, without the duty of equalizing among the beneficiaries.

Section 3 provides, in relevant part, that Trust A is to terminate after the death of Grantor, Grantor’s Spouse, Son, and Daughter upon the latest to occur of (i) the youngest issue of Grantor living on Date 1 attaining the age of x or (ii) the expiration of a y-year period after the death of Grantor, Grantor’s Spouse, Son, or Daughter. Upon termination, all of the property is to be distributed in equal shares *per stirpes* to the issue of Grantor.

Section 7 of Trust A provides, in relevant part, that Trust A is not to continue for a period longer than 21 years after the death of the survivor of certain named beneficiaries who were alive on Date 1. At the end of this period, the entire trust is to be paid over and distributed as provided in the trust document, notwithstanding that the time for distribution may not otherwise have arrived.

Grantor and Grantor’s Spouse are deceased. Son and Daughter are currently alive. The youngest issue of Grantor living on Date 1 has attained the age of x. The current and/or contingent beneficiaries of Trust A consist of Son, Son’s Spouse, Daughter, Daughter’s Spouse, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4,

Grandchild 5, GGC 1, GGC 2, GGC 3, GGC 4, GGC 5, GGC 6, GGC 7, GGC 8, GGC 9, GGC 10, GGGC1, and GGGC2.

On Date 2, Court accepted jurisdiction over the administration of Trust A. Pursuant to court order, Court changed the law governing the administration of Trust A to that of State 2 and changed the trustee of Trust A to Trust Company. State 1 law continues to govern the validity, duration, and construction of Trust A.

On Date 3, Trust Company, pursuant to its authority under State 2 Statute, appointed all of the principal and accumulated income of Trust A to a new trust, to be known as Trust B, contingent upon receipt of a court order from Court and upon a favorable private letter ruling. On Date 4, Court authorized the appointment of principal and accumulated income of Trust A to Trust B without further order of the court, contingent upon receipt of a favorable private letter ruling. State 2 Statute was not in effect on Date 1.

The class of beneficiaries and the distribution standard in Article 3.1 of Trust B is identical to the class of beneficiaries and the distribution standard in Section 2 of Trust A. Under Article 3.1 of Trust B, the trustee may distribute to or for the benefit of any one or more of the beneficiaries as much of the net income from and/or principal of Trust B as the trustee may from time to time deem necessary or advisable, in such amounts or proportions as the trustee may from time to time select, for any purpose. Article 3.1 further provides that the trustee, in the trustee's discretion, may set a distribution policy providing annual distributions to the beneficiaries, or any one or more of them, equal to a percentage of Trust B's value as of the first of the year. Article 3.3 of Trust B provides, in relevant part, that the trustee need not apportion such distributions equally among the beneficiaries, nor make distributions to each of them, and in exercising its discretion to make such distributions, may take into consideration the respective needs and other individual circumstances of the beneficiaries.

The termination provision of Trust B is also identical to the termination provision of Trust A. Article 3.4 of Trust B provides that Trust B is to terminate y years after the death of Son and Daughter, whichever is later. However, instead of providing an outright distribution of assets to the beneficiaries, Article 3.5 of Trust B provides that the balance of the trust estate is to be allocated and distributed in separate trusts to the living descendants of Grantor, *per stirpes*, as described in Article 4 of Trust B.

Article 4 of Trust B provides, in relevant part, that each separate trust named for a descendant of Grantor is to be held, managed, administered, and distributed under the terms of the article (Article 4 Trust). Each descendant of Grantor for whom a separate trust is created, named, and held is to be the beneficiary of his or her separate trust.

Article 4.1 of Trust B provides, in relevant part, that for each separate trust, the trustee is to distribute to or for the benefit of the beneficiary as much of the net income

from and/or principal of the separate trust as the trustee may from time to time deem necessary or advisable, in such amounts or proportions as the trustee may from time to time select, for any purpose. Without limiting the trustee's discretion with regard to these distributions, the trustee, in the trustee's discretion, may set a distribution policy providing that annual distributions to the beneficiary be equal to a percentage of the separate trust's value as of the first of the year. Any net income not so distributed is to be accumulated and annually added to principal.

Article 4.2 of Trust B provides, in relevant part, that if the beneficiary dies before the separate trust is completely distributed, the trustee is to distribute the remaining assets of the separate trust, including any accrued income, to any such person or persons in such amount or amounts as the beneficiary is to appoint in the beneficiary's last will and testament, specifically referring to this testamentary general power of appointment. In default of appointment, the remaining balance of the separate trust is to be allocated and distributed to the beneficiary's then surviving descendants, *per stirpes*. Article 12.6(10) defines the term "general power of appointment" to mean a power of appointment that may be exercised by the donee of such power, outright or in trust in favor of one or more of the permissible appointees or their estates, in such portions as the donee of the power may appoint, including, without limitation, the donee, the donee's estate or the creditors of either.

The terms of Trust B include modifications to the administrative terms of the trust. Article 7 of Trust B provides for the future appointment of a distribution committee that is granted the authority to make discretionary distribution decisions; Article 8 of Trust B provides for the future appointment of an investment committee that is granted the authority to make investment and administrative decisions; and Article 6 provides for the future appointment of a Trust Protector to protect the interests of the beneficiaries and to accomplish Grantor's intentions as set forth in Trust A. Other provisions in Trust B provide that the Trust Protector must be an individual who is not Grantor or a beneficiary or any person related or subordinate to Grantor or the beneficiary within the meaning of § 672(c) of the Internal Revenue Code (Code) and must also be a currently licensed certified public accountant or attorney with significant experience in estate planning and trust matters.

Article 9.2 of Trust B provides, in relevant part, that the trustee must be a corporate trustee. Other provisions of Trust B provide that the corporate trustee must be a trust company or national or state banking institution having trust or fiduciary powers. The corporate trustee must also not be Grantor or a beneficiary or any person related or subordinate to Grantor or the beneficiary within the meaning of § 672(c).

Article 11.6 of Trust B provides for a perpetuities period that is identical to that of Trust A. The article provides that Trust B and any trusts created under Trust B are not to continue for a period longer than 21 years after the life of the survivor of the named beneficiaries in Article 7 of Trust A, who were alive on Date 1.

It is represented that no additions, actual or constructive, have been made to Trust since September 25, 1985.

You have requested the following rulings:

1. The proposed transfer of Trust A assets to a successor trust, Trust B, and the modifications caused by the distribution to Trust B, will not cause the loss of exempt status from the GST tax under § 2601 of the Code.
2. As a result of a beneficiary's testamentary power to appoint in Article 4.2 of Trust B with respect to the property of that beneficiary's Article 4 Trust, the property subject to the power will be includible in that beneficiary's gross estate under § 2041.

LAW AND ANALYSIS

Rulings 1 and 2

Section 2041(a)(2) provides that the value of the gross estate includes the value of all property with respect to which the decedent has at the time of his 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 which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Under § 2041(b)(1) the term "general power of appointment" is defined, in relevant part, to mean a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

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

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was 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)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) 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)(A) provides that the distribution of trust principal from an exempt trust to a new trust or retention of trust principal in a continuing trust will not cause the new or continuing trust to be subject to the provisions of chapter 13, if either the terms of the governing instrument of the exempt trust authorize distributions to the new trust or the retention of trust principal in a continuing trust, without the consent or approval of any beneficiary or court; or at the time the exempt trust became irrevocable, state law authorized distributions to the new trust or retention of principal in the continuing trust, without the consent or approval of any beneficiary or court; and the terms of the governing instrument of the new or continuing trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(D)(1) 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 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)(D)(2) provides that for purposes of § 26.2601-1, 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. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a 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 modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 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.

Section 2652(a) provides, in relevant part, that in the case of any property subject to the tax imposed by chapter 11, the term "transferor" means the decedent.

State 2 Statute provides that a trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument; however, the terms of the second trust are subject to certain limitations related to maintaining the beneficial interests set forth in the original trust, including: (1) only beneficiaries of the original trust may be beneficiaries of the second trust; (2) a power of appointment may be conferred upon a beneficiary to whom the trustee has the power to distribute principal or income of the original trust, subject to State's rule against perpetuities statute.

In the instant case, Trust A does not expressly authorize the trustee to distribute principal from Trust A to Trust B. While State 2 Statute authorizes the trustee to make such a distribution, to satisfy the requirement in § 26.2601-1(b)(4)(i)(A), the state law must be in effect at the time the exempt trust became irrevocable. In this case, State 2 Statute was enacted and become applicable to Trust A subsequent to the execution of Trust A. Accordingly, the effect of the proposed distribution of Trust A principal to Trust B on the exempt status of the trusts will be evaluated under the rules in § 26.2601-1(b)(4)(i)(D).

Article 3.1 of Trust B sets forth income and principal distribution terms and conditions identical to those in Section 2 of Trust A. Article 3.4 of Trust B provides for termination of Trust B at the same time Trust A would have terminated under Section 3, taking into account that Grantor and Grantor's Spouse are now deceased and the youngest issue of Grantor living on Date 1 has already attained the age of x. Article 3.5

of Trust B identifies the same class of remainder beneficiaries as in Section 3 of Trust A. Trust B differs from Trust A, however, by providing in Article 4 for the creation of separate trusts for each Article 3.5 beneficiary after the termination of Trust B.

Under Article 4.1 and 4.2 of Trust B, the beneficiary of each Article 4 Trust is the sole lifetime beneficiary of the trust and is granted a testamentary general power of appointment over the principal of such trust. The grant of a testamentary general power of appointment to the sole lifetime beneficiary of a trust is viewed as functionally equivalent to granting outright ownership. See Restatement (Second) of Property § 19.4 (1986). For transfer tax purposes, the grant of the power will cause the value of each beneficiary's Article 4 Trust to be includible in the gross estate of the beneficiary at his or her death under § 2041(a)(2) and the beneficiary to be treated as the transferor of the Article 4 Trust for GST tax purposes under § 2652(a)(1). Therefore, with respect to these provisions of Trust B, the distribution of principal from Trust A to Trust B will not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust.

Trust B additionally differs from Trust A by modifying the provisions relating to the administration of trust, including provisions for (1) the future appointment of a Distribution Committee that is granted the authority to make discretionary distribution decisions, (2) the appointment of an Investment Committee whose authority is limited to investment and administrative decisions, and (3) the future appointment of a Trust Protector. Trust B provides that certain individuals and classes of individuals are prohibited from serving as corporate trustee and Trust Protector. Pursuant to § 26.2601-1(b)(4)(i)(D)(2), modifications that are administrative in nature that only indirectly increase the amount transferred will not be considered to shift a beneficial interest in the trust. See *Example 10* of § 26.2601-1(b)(4)(i)(E). Therefore, with respect to these Trust B administrative provisions, the distribution of principal from Trust A to Trust B will not cause a shift of a beneficial interest to a lower generation beneficiary nor 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 the representations made, we conclude that the proposed distribution of assets from Trust A to Trust B satisfies the requirements of § 26.2601-1(b)(4)(i)(D) and will not cause Trust A or Trust B to lose their exempt status for GST tax purposes. We also conclude that each named beneficiary of an Article 4 Trust will possess a general power of appointment described in § 2041(b)(1) with respect to the property subject to this power. The value of the property subject to this power at the time of the beneficiary's death will be includible in the beneficiary's gross estate under § 2041(a)(2).

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.

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.

A copy of this letter should be attached to any gift, estate, or GST tax returns that you may file relating to this matter.

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,

Karlene M. Lesho

[Karlene M. Lesho]
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: