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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-116802-22

Date:
March 02, 2023

Re:

Legend

Trust =
Trustee =
Settlor =
Child =
Date =
Grandchild 1 =
Grandchild 2 =
Grandchild 3 =
Grandchild 4 =
State =
Statute =

Dear :

This letter responds to your authorized representative's letter dated August 31, 2022, and subsequent correspondence, requesting income, estate, gift, and generation-skipping transfer (GST) tax rulings with respect to the proposed division of Trust.

The facts and representations submitted are summarized as follows:

On Date, Trust was established by Settlor for the primary benefit of Settlor's child, Child, under an Agreement and Declaration of Trust (Trust Agreement). Settlor had three children in addition to Child. Child and Child's four children, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4 are living.

Trustee is currently serving as trustee of Trust, which is administered under the laws of State. Trust was irrevocable before September 25, 1985, and no actual or constructive additions to Trust were made after that date.

Under the terms of Trust Agreement, Trustee must distribute all income to Child and may distribute principal to Child to provide for Child's maintenance, support, and education. Trustee may distribute principal to Settlor's issue (including issue who are not the issue of Child) to provide for their maintenance, support, and education. After Child's death, Trustee must distribute all income to Child's issue, per stirpes. Trustee may continue to distribute principal to any of Settlor's issue to provide for maintenance, support, and education. Trust terminates 21 years after the death of Settlor's last surviving child, and the remainder is distributed to Child's issue, per stirpes.

Under the terms of the Trust Agreement, Trust holds all property in one share. Because Child's children have different investment goals and distribution priorities, Trustee proposes to divide Trust into four equal, separate trust shares for the benefit of Child and each of Child's children and their respective issue (Resulting Trusts). Each Resulting Trust will be funded with one quarter of the assets of Trust. The terms of each Resulting Trust will be identical and unchanged from the terms of Trust Agreement, except that each Resulting Trust will be held for the benefit of Child and the respective child for whom the Resulting Trust was created and such child's issue. Each Resulting Trust also provides Settlor's issue who are not the issue of Child with the same beneficial interest they each had under Trust. The division of Trust into Resulting Trusts will be created by a pro rata distribution from Trust.

State Statute provides, in relevant part, that after notice to qualified beneficiaries, a trustee may divide a trust into two or more separate trusts if the result does not substantially impair the rights of any beneficiary or have a materially adverse effect on the achievement of the purposes of the trust.

You have requested the following rulings regarding the proposed division and equal allocation of Trust assets to four separate trusts:

1. The proposed division will not cause Trust or the Resulting Trusts to lose their grandfathered status for purposes of GST tax or otherwise become subject to GST tax.
2. The proposed division will not result in the recognition of income, gain, or loss from a sale or other disposition of Trust property under § 61, § 661, § 662, or § 1001 of the Internal Revenue Code (Code).

3. The proposed division will not constitute a transfer subject to gift tax under § 2501.
4. The adjusted basis and holding periods of the Resulting Trusts will be the same as the adjusted basis and the holding periods of Trust.
5. The proposed division will not cause Trust assets to be includible in the gross estate of any Trust beneficiaries under §§ 2035, 2036, 2037, and 2038.

LAW AND ANALYSIS

Ruling 1

Section 2601 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 will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in this paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Thus (unless specifically noted), the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust, by judicial reformation or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the GST 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 transfer or the creation of a new GST transfer. 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, provides as follows: In 1980, Trustor 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 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 this case, Trust will be divided into four separate trusts each benefitting Child, one Grandchild, and his or her descendants (Resulting Trusts). Each Resulting Trust also provides Settlor's issue who are not the issue of Child with the same beneficial interest they each had under Trust. The proposed division will not result in a shift of any beneficial interest in Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed division will not extend the time for vesting of any beneficial interest in the Resulting Trusts beyond the period provided for in Trust. Accordingly, based on the facts submitted and the representations made, if the division of Trust satisfies all of the State law requirements and is valid under State law, we conclude that the division of Trust will not cause Trust or any of the Resulting Trusts to lose their exempt status from GST tax or otherwise become subject to GST tax.

Ruling 2

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

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.

Rev. Rul. 56-437, 1956-2 C.B. 507, holds that the conversion of a joint tenancy in stock to a tenancy in common in order to eliminate the survivorship feature and the partition of a joint tenancy in stock are not sales or exchanges. Similarly, divisions of trusts are also not sales or exchanges of trust interests where each asset is divided pro rata among the new trusts. See Rev. Rul. 69-486, 1969-2 C.B. 159 (pro rata distribution of trust assets not a sale or exchange).

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) 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.

In this case, the Trust Agreement provides the terms governing distribution of Trust for Child and Child's descendants. It is represented that the proposed division of Trust into four equal, separate trusts (Resulting Trusts) will be funded pro rata with assets of equal value. In addition, Trustee is authorized by State Statute to divide Trust into two or more separate trusts. The Resulting Trusts will be funded with Trust property of equal value; Trust will receive nothing in exchange for the allocation of Trust assets among the Resulting Trusts; and the proposed division does not shift beneficial interests in Trust because the beneficiaries will have substantially equal interests before and after the proposed division. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division of Trust will not cause Trust, the Resulting Trusts, or any beneficiary of any of the foregoing trusts, to recognize any gain or loss from a sale or other disposition of Trust assets under § 61 and § 1001. We further conclude that the proposed division is not a distribution under § 661 or § 1.661(a)-2(f) and will not cause Trust, the Resulting Trusts, or any beneficiary of the foregoing trusts to recognize any income, gain, or loss under § 662.

Ruling 3

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift 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 value of the beneficial interests of the beneficiaries are the same, both before and after the proposed division. Thus, we conclude that no transfer of property will be deemed to occur as a result of the division of Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division will not cause any beneficiary of Trust, or the Resulting Trusts to have made a gift subject to federal gift tax.

Ruling 4

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.

In this case, as stated above, § 1001 does not apply to the proposed transaction. Thus, after the division of Trust and transfer of the assets into the Resulting Trusts, the basis in each asset will be the same in the Resulting Trusts as it was in Trust under § 1015. Further, we conclude that the holding period of the assets received by the Resulting Trusts will be the same as the holding period of the assets in Trust. See § 1223(2).

Ruling 5

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 transferred an interest in 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 the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038, or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate shall include the value of any property (or interest therein) that would have been so included. Under § 2035(b), the gross estate shall be increased by the amount of any gift tax paid by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

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.

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 proposed division of Trust does not constitute a transfer within the meaning of §§ 2036 through 2038. The beneficiaries of the four Resulting Trusts will have the same interests after the division that they had as beneficiaries under Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division of Trust will not cause the assets of Trust, or the Resulting Trusts to be includible in the gross estate of any beneficiary of such trusts for federal estate tax purposes under § 2035, 2036, 2037, or 2038.

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

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.

Sincerely,

Leslie H. Finlow

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

Enclosure (1)
Copy for § 6110 purposes

cc: