

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-122371-23

Date:
May 08, 2024

In Re:

Legend

Settlor =

Trust =

Trustee =

Child =

Grandchild 1 =

Grandchild 2 =

Grandchild 1 Trust =

Grandchild 2 Trust =

Individual 1 =

Individual 2 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
State =
Court 1 =
Court 2 =
x =
y =
State Statute =

Dear :

This letter responds to your authorized representative’s letter dated November 3, 2023, and subsequent correspondence, requesting generation-skipping transfer (GST), gift, and income tax rulings with respect to proposed modifications of Grandchild 2 Trust.

The facts and representations submitted are summarized as follows:

Settlor executed her will on Date 1. Settlor died on Date 2 (a date prior to September 25, 1985), a resident of State. Settlor was survived by spouse and children. Settlor’s spouse died on Date 3.

Article V, A. of Settlor’s will provides, in relevant part, that the residue of Settlor’s estate is to be held in trust and divided into separate shares of equal value for each child of Settlor then living and for each descendant then living of each child then deceased leaving one or more descendants. Each separate share is to be held, managed, and

distributed as a separate trust. Child is one of Settlor's four children, and Trust was established for Child's benefit after Settlor's death.

On Date 4, Court 1 issued an order modifying certain provisions of Trust. On Date 5, Court 2 issued an order modifying certain provisions of Trust, pending a favorable ruling from the Internal Revenue Service. On Date 6, the Internal Revenue Service issued a favorable ruling with respect to the modifications in the Date 4 and Date 5 orders.

Pursuant to the Date 5 order, Trust was divided into two separate shares of equal value, creating Grandchild 1 Trust and Grandchild 2 Trust (collectively, "Grandchildren's Trusts"). Trustee currently serves as trustee of Grandchildren's Trusts. This letter ruling pertains to Grandchild 2 Trust only.

The relevant provisions of Grandchild 2 Trust, as modified by the Date 4 and Date 5 orders, are summarized as follows:

Article V, B. provides that during the life of Settlor's spouse, the trustee is to pay to any member of the class composed of Settlor's spouse, Grandchild 2, and Grandchild 2's descendants as much of the income of the separate share then held in trust as trustee deems necessary for support, education, and health of the class members. Any net income for each fiscal year of such trust not distributed prior to the last day of such year is to be added to the principal of such separate share.

Article V, C., b. provides that upon the death of Settlor's spouse, the trustee is to pay the net income of Grandchild 2 Trust to any member of the class composed of Child, Grandchild 2, and Grandchild 2's descendants in the same manner and upon the same terms and conditions as provided in Article V, B., so long as Child shall live.

Article V, G. provides that upon the death of Child, the trustee is to pay and distribute all of the principal and the accrued, accumulated and unpaid net income of Grandchild 2 Trust to Grandchild 2, but if Grandchild 2 is not then living, then to Grandchild 2's descendants *per stirpes*, but if no such descendants are then living then to Child's descendants *per stirpes*; provided, however, that the share or portion thereof payable and distributable to each descendant of Settlor for whose primary benefit the trustee is then holding a separate share or portion thereof in trust is to be added to and become part of the principal and income of such separate share or portion.

Article VI, A. provides that if, in the sole judgment of the trustee, the aggregate of the income payable and accruing from all other sources known to the trustee to any beneficiary is insufficient to provide for his or her suitable care, maintenance, education, and medical attention, the trustee, in the trustee's sole discretion, may pay to or apply for the benefit of such beneficiary a portion of the principal then held in trust.

Article VI, E. provides that any trust in existence twenty-one (21) years after the death of the last to survive of Settlor and Settlor's descendants living at the time of Settlor's

death shall then terminate and be distributed to the income beneficiary, or beneficiaries, of the trust.

Article IX, C. provides that if Trustee is no longer acting as trustee, then Individual 1 shall act as his successor trustee.

Article IX, E. provides that if a vacancy in the office of trustee shall occur, then a majority of the adult beneficiaries of the trust who have capacity and are then eligible to receive income distributions (one of whom must be Child if she is then living) shall have the power to appoint a successor trustee, or co-trustees, or a succession of one or more trustees by written instrument delivered to the trustees so appointed; provided, that no person named as a successor trustee of the trust shall be a beneficiary of the trust and that until Child's death, at least one trustee must be a trustee of both Grandchildren's Trusts.

Article IX, I. provides that Individual 2 shall have the power to remove any trustee. Individual 2 may also appoint successors with the power to remove trustees, who may also designate their successors. No beneficiary of a trust may be appointed as a successor with the power to remove trustees.

On Date 7, Trustee petitioned Court 2 to modify Grandchild 2's Trust. On Date 8, Court 2 issued an order approving the proposed modifications, pending a favorable ruling by the Internal Revenue Service.

The Date 8 order approves the proposed modifications of certain provisions of Grandchild 2's Trust as follows, effective upon notifying Court 2 of favorable federal generation-skipping transfer, gift, and income tax rulings further described below.

Article V, C., b., as modified by the Date 8 order, provides that any income distribution from Grandchild 2 Trust to a descendant of Child during Child's lifetime may be retained in a separate trust of which the descendant is the primary beneficiary, to be held and administered under the terms of Article V, L., unless such a trust is already in existence, in which case the distribution may be added to such trust.

Article V, G., a., as modified, provides that upon Child's death, Grandchild 2 Trust shall be held for the benefit of Grandchild 2, if Grandchild 2 is then living, and administered under the terms of Article V, L. If Grandchild 2 is not then living, Grandchild 2 Trust shall be divided into shares for the descendants of Grandchild 2 *per stirpes*, but if no such descendant is then living, then for Child's descendants *per stirpes*, but if no such descendant is then living, then for Settlor's descendants *per stirpes*. In addition, any share or portion of any trust allocated to Grandchild 2 shall be added to the Grandchild 2 Trust.

Article V, G., c., as modified, provides that any share or portion of Grandchild 2 Trust allocated to a descendant of Settlor, other than Grandchild 1 or Grandchild 2, shall be

added to the trust administered under Article V, L. for the benefit of such descendant, if such trust then exists, and if such trust does not then exist, such share shall be retained in trust for such descendant and administered under Article V, L.

Article V, L., a. provides that the net income of each trust for the benefit of a descendant of Settlor (the beneficiary) shall be paid to the beneficiary on the same terms as Article V, B. for the beneficiary's lifetime. Former Article V, L. is redesignated as Article V, M.

Article V, L., b., as modified, provides that the beneficiary of each trust administered under Article V, L. shall have a testamentary general power of appointment in favor of such persons or organizations, including the beneficiary's estate, as the beneficiary appoints by will. To the extent that the beneficiary does not exercise the testamentary general power of appointment, the trust shall be divided into shares for the beneficiary's descendants *per stirpes*, and if no such descendant is then living, then into shares for the descendants *per stirpes* of the beneficiary's nearest ancestor who was a descendant of Settlor who has a lawful descendant, and if no such descendant is then living, then into shares for Settlor's descendants *per stirpes*; provided, however, any share allocated to Grandchild 2 shall be added to Grandchild 2 Trust, any share allocated to Grandchild 1 shall be added to Grandchild 1 Trust, and any share allocated to a descendant of Settlor, other than Grandchild 1 or Grandchild 2, shall be added to the trust administered under Article V, L. for the benefit of such descendant, if such trust then exists, but if such trust does not then exist, such share shall be retained in trust for such descendant and administered under Article V, L.

Article VI, A., c., as modified, provides that any distribution of principal pursuant to Article VI, A. to Grandchild 2 or to a descendant of Grandchild 2 during Child's lifetime may be retained in a separate trust of which the descendant is the primary beneficiary, to be held and administered under the terms of Article V, L., unless such a trust is already in existence, in which case the distribution may be added to such trust. Former Article VI, A., c. is redesignated as Article VI, A., e.

Article VI, A., d., as modified, provides that any distribution of principal from a trust administered under Article V, L., or from the Grandchild 2's Trust, after the death of Child may be made only to the descendant of Settlor who is the primary beneficiary of the trust.

Article IX, C., as modified, provides that Individual 1 will not serve as successor trustee and that Trustee shall have the power to appoint co-trustees, successor trustees, or a succession of trustees to fill a current or prospective vacancy in the office of trustee. In addition, Trustee shall have the right to amend or revoke any trustee designation before a designated person acts as trustee.

Article IX, E., as modified, provides only that at least one trustee must be a trustee of both Grandchildren's Trusts. All other provisions of former Article IX, E. are deleted.

Article IX, F., as modified, provides that Child and Grandchild 2, while both are living and have capacity, jointly appoint co-trustees, successor trustees, or a succession of trustees for Grandchild 2's Trust to fill a current or prospective vacancy in the office of trustee, to the extent that Trustee is no longer acting as trustee and has not effectively designated successor trustees. In addition, Child and such Grandchild shall have the right to amend or revoke any such designation before a designated person acts as trustee. Former paragraphs F., G., and H. of Article IX are redesignated as G., H., and I., respectively.

Article IX, F., b., as modified, provides that Grandchild 2 may appoint co-trustees, successor trustees, or a succession of trustees of the trusts administered under Article V, L. for the benefit of Grandchild 2's descendants. In addition, each descendant of Grandchild 2 who is the primary beneficiary of a trust administered under Article V., L. who has attained thirty (30) years of age shall have the right to appoint one or more qualified persons as co-trustees, successor trustees or to provide for a succession of one or more qualified persons as trustees of such trust; provided, however, that such appointment shall only be effective to the extent that Grandchild 2 has not effectively designated co-trustees and successor trustees. Each descendant may amend or revoke any such designation before a designated person acts as trustee.

Article IX, F, c., as modified, provides that a vacancy in the office of co-trustee is not required to be filled if one trustee is still acting. If no person is acting as trustee, then the last acting trustee who has not been removed as a trustee may appoint a qualified person as successor trustee.

Article IX, F., d., as modified, provides that no successor trustee of a trust appointed pursuant to Article IX, F. may be a beneficiary of the trust, or a related or subordinate party with respect to any such beneficiary who participated in the decision to appoint or designate that trustee (determined as though the beneficiary were the grantor, as that term is used in Internal Revenue Code § 672(c)).

Article IX, F., e., as modified, provides that a qualified person is an individual who is a licensed private professional fiduciary, Certified Financial Planner, Chartered Financial Analyst, Certified Public Accountant, or attorney with at least x consecutive years of work experience in trust planning or financial management, or any entity or organization qualified and authorized under applicable state law to administer trusts with at least \$y of assets under management.

Article IX, I. is redesignated as Article IX, J., and, as modified, provides that Individual 2 will not serve as a person with the power to remove trustees and to appoint successors with such power. Further, Article IX, J., as modified, provides that during Child's lifetime, Child and Grandchild 2 may, acting jointly, remove the trustee of Grandchild 2's Trust. In addition, each descendant of Settlor who has attained forty (40) years of age for whom a trust administered under Article V, L. is in existence shall have the right to remove the trustee of such trust, but only to the extent that such trustee was

not appointed by Trustee or Child, and if the beneficiary of such Lifetime Trust is a descendant of Grandchild 2, then the beneficiary may not remove a trustee appointed by Grandchild 2. If a Trustee is removed, a successor Trustee shall be appointed as specified in Article IX.

Trustee represents that Trust and Grandchildren's Trusts have been irrevocable since their establishment and that no contributions have been made to Trust or Grandchildren's Trusts since their initial funding.

You have requested the following rulings:

1. The proposed modifications under the Date 8 order will not cause Grandchild 2's Trust to lose GST-exempt status or otherwise become subject to the GST tax.
2. The proposed modifications under the Date 8 order will not constitute a transfer by any beneficiary of Grandchild 2's Trust subject to federal gift tax.
3. The proposed modifications under the Date 8 order will not cause Grandchild 2's Trust or any beneficiary of such trust to recognize gain or loss from a sale or other disposition of property.
4. The adjusted basis and holding periods of the assets of the Grandchild 2's Trust will be the same as the adjusted basis and holding periods of those assets prior to the proposed modifications under the Date 8 order.

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 under § 26.2601-1(b) will not cause the trust to lose its exempt status.

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 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.

Section 26.2601-1(b)(4)(i)(D)(2) provides that 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 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 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of 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, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive.

Section 2652(a)(1) provides that the term transferor means, in the case of any property subject to the tax imposed by chapter 11, the decedent, and in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

State Statute provides, in relevant part, that on the 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 because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust.

Both before and after the proposed modifications, Child and Child's descendants, including Grandchild 2 and Grandchild 2's descendants, hold all the beneficial interests in Grandchild 2's Trust. After the proposed modifications, Child and Child's descendants, including Grandchild 2 and Grandchild 2's descendants, have the same interests they had before the proposed modifications, except that trust property that would have been distributed free from trust to a beneficiary may or will be retained in separate trust for the sole lifetime benefit of such beneficiary. With respect to each such trust, the beneficiary is granted a testamentary general power of appointment under § 2041(a)(2) over the trust, and each such trust must terminate and vest within the period prescribed by State's rule against perpetuities.

For transfer tax purposes, the grant of the testamentary general power of appointment will cause the beneficiary's trust to be includible in the gross estate of the beneficiary at his or her death under § 2041(a)(2), and the beneficiary will be the transferor of the trust for GST tax purposes under § 2652(a)(1). Therefore, with respect to these provisions, the proposed modifications to Grandchild 2's Trust 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.

In addition, the trustee removal and succession provisions after the proposed modifications to Grandchild 2's Trust differ from such provisions before the proposed modifications. 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 administrative provisions of Grandchild 2's Trust, the proposed modifications 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 on the facts submitted and the representations made, we conclude that the proposed modifications of Grandchild 2's Trust pursuant to the Date 8 order do not cause Grandchild 2 Trust to lose GST-exempt status or otherwise become subject to the GST tax.

Ruling 2

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 beneficiaries of Grandchild 2 Trust will have substantially the same interests after the proposed modifications that they had before the proposed modifications. The beneficiaries will continue to have the right to receive discretionary distributions of income and principal during Child's lifetime, and they will receive a share of trust property upon Child's death which will be included in their gross estates at death. Because the beneficial interests of the beneficiaries are substantially the same both before and after the proposed modifications, no transfer of property is deemed to occur as a result of the modifications. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications do not cause any beneficiary of Grandchild 2 Trust to have made a gift subject to federal gift tax.

Rulings 3 & 4

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

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 loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss determined under § 1001 on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

Based on the facts submitted and the representations made, we conclude that there will be no sale or other disposition because no transfer of property is deemed to occur as a

result of the proposed modifications. Accordingly, the proposed modifications of Grandchild 2's Trust pursuant to the Date 8 order will not cause Grandchild 2's Trust or the beneficiaries thereof to recognize any gain or loss under §§ 61(a)(3) and 1001.

As the proposed modifications do not result in a sale or other disposition of property under §§ 61(a)(3) and 1001 or a transfer of property under § 2511(a), the basis of the assets of Grandchild 2's Trust will be the same immediately after the proposed modifications as the basis of those assets (determined under § 1012 or other applicable sections of the Internal Revenue Code) immediately prior to the proposed modifications under the Date 8 order. Furthermore, we conclude that the holding period of the assets of Grandchild 2's Trust will be the same immediately after the proposed modifications as the holding period of those assets immediately prior to the proposed modifications under the Date 8 order.

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.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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,

Associate Chief Counsel
Passthroughs and Special Industries

/ s /

Melissa C. Liquerman
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: