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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PT&E:B04  
PLR-113273-25

Date:  
February 09, 2026

In Re:

Legend

Grantor =  
Son =  
Daughter =

Grandchild 1 =  
Grandchild 2 =  
Trustee =  
Trust =

Date 1 =  
Date 2 =  
Date 3 =  
State Statute 1 =  
State Statute 2 =  
State =  
County Court =

X =  
Y =

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letter received July 11, 2025, and subsequent correspondence, requesting gift, estate, and generation-skipping transfer (GST) tax rulings with respect to the proposed modifications of Trust.

The facts and representations submitted are summarized as follows:

On Date 1, a date that is prior to September 25, 1985, Grantor executed an irrevocable trust, Trust, for the benefit of Son. Grantor has two children, Son and Daughter ("Children"). Son has two children, Grandchild 1 and Grandchild 2. Grantor made an initial transfer of property to Trust. Trustee is currently serving as trustee of Trust, which is administered under the laws of State.

Under the terms of Article Second of Trust, the trustee must distribute, at least annually, x percent of net income to Son. Article Second further provides that the remaining annual income shall be accumulated and added to the principal of Trust, provided that if the trustee considers such income payments to be insufficient, the trustee may distribute principal to Son for Son's welfare, comfortable support, and education.

Article Third of Trust provides that, unless sooner terminated by its terms, Trust will terminate on the date of Son's death. Upon Son's death, Article Third provides that the remaining trust assets are to be paid, subject to retention in a separate trust pursuant to Article Fourth until age y, to the then-living issue of Son in equal shares, per stirpes. Article Third provides that upon the death of Son leaving no issue surviving, the remaining trust assets are to be paid to the then-living issue of Grantor in equal shares, per stirpes, and in default of such issue, to the estate of Son.

Article Fourth of Trust provides, in part, during the administration of the separate trust, the trustee may distribute to or for the benefit Son's issue so much of the income and principal as the trustee deems advisable for the welfare, comfortable support and education of said issue. Upon such issue attaining the age of y as provided in Article Fourth of Trust, the share held for such issue is to be distributed to such issue free of any trust. If any of the surviving issue shall die prior to reaching the age of y, the trust share held for such issue is to be distributed to the estate of such issue.

Article Fifth of Trust identifies powers of the trustee that are in addition to powers vested in trustees by law. Paragraph J of Article Fifth provides that in making any payments of income or principal pursuant to the terms of Trust, the trustee may, in its sole discretion, make any such payments directly to the beneficiary or indirectly on behalf of the beneficiary.

Article Ninth of Trust provides that the trustee may resign at any time by petitioning a court of competent jurisdiction to designate and appoint a successor trustee. Article Ninth provides direction regarding a trustee's compensation.

Article Eleventh of Trust outlines the spendthrift provisions that apply to Son and any remainderman.

State Statute 1 provides, in part, that a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust.

State's common law rule against perpetuities applies to the administration of Trust and thus, property of Trust must vest in one or more of the remainder beneficiaries no later than twenty-one (21) years after the death of a life in being at the time of the creation of the interest. See State Statute 2.

On Date 2, Grantor, Son, and all contingent beneficiaries of Trust executed a modification agreement to modify the terms of Trust, effective upon the issuance of a favorable private letter ruling and a County Court decree approving modification of Trust in accordance with the terms of the modification agreement.

Grantor and Son, with the consent of all Trust contingent beneficiaries, petitioned County Court to approve the modification agreement regarding Trust, and, on Date 3, County Court issued an order (Date 3 Order) approving the modification agreement.

The relevant provisions of Trust, as modified by the Date 3 Order, are summarized as follows:

Article Third of Trust, as modified, continues to provide that upon the death of Son, the remaining trust assets are to be allocated to the then-living issue of Son in equal shares, per stirpes, and in default of such issue, to the then-living issue of Grantor in equal shares, per stirpes, and in default of such issue, to the estate of Son. Further, under Article Fourth, as modified, the property that is allocated to Son's issue shall be retained in a separate issue trust (Issue Trust) for each of Son's issue.

Article Fourth of Trust, as modified, provides for the same distributions of income and principal to the beneficiary of an Issue Trust as provided in Article Second of Trust, and provides that, unless sooner distributed in full, the Issue Trust terminates upon the earlier of (i) the death of the beneficiary, or (ii) the day prior to the date that is twenty-one (21) years after the death of the last to die of Grantor's Children. If the Issue Trust terminates upon the death of the beneficiary, Article Fourth, as modified, grants the beneficiary a testamentary general power to appoint the trust property, including undistributed income. To the extent not effectively appointed by such beneficiary, Article Fourth, as modified, provides the remaining trust property shall be paid to the beneficiary's estate. If the Issue Trust terminates the day prior to the date that is twenty-one (21) years after the death of the last to die of Grantor's Children, the remaining trust property shall be paid to the beneficiary.

Article Fifth, Paragraph J of Trust, as modified, confirms that the trustee's discretionary power to make payments of income or principal directly to a beneficiary or indirectly on behalf of a beneficiary applies in the case of payments to or on behalf of Son's issue or issue of Grantor.

Article Ninth of Trust, as modified, provides for the resignation and appointment of an additional and successor trustee.

Article Eleventh of Trust, as modified, confirms the spendthrift clause applies equally to Son, Son's issue, and Grantor's issue.

It is represented that no actual or constructive additions have been made to Trust after September 25, 1985. It is also represented that Grantor has retained no ownership interest in, and no aspects of ownership over, Trust or the assets of Trust.

### Rulings Requested

You have requested the following rulings:

1. The proposed modifications to the terms of Trust will not cause Trust or any separate Issue Trust subsequently created under the terms of Trust to lose its exempt status for purposes of the GST tax.
2. The proposed modifications to the terms of Trust will not result in the inclusion of the value of any Trust property in the gross estate of the Grantor for Federal estate tax purposes.
3. The proposed modifications to the terms of Trust will not cause the Grantor to have made a gift for Federal gift tax purposes.
4. The proposed modifications to the terms of Trust will not cause any beneficiary of Trust to have made a gift for Federal gift tax purposes.

### Law and Analysis

#### Ruling 1

##### Law

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

Section 2612(a) provides that the term "taxable termination" means a termination (by death, lapse of time, release of a power, or otherwise) of an interest in property held in a trust unless (A) immediately after such termination, a non-skip person has an interest in

such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person. Section 2612(b) provides that the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip). Under § 2612(c)(1), a direct skip is a transfer subject to federal estate or gift tax of an interest in property 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 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). Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under § 2038 or § 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, is considered an irrevocable trust except as otherwise provided in § 26.2601-1(b)(1)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under §§ 2038 and 2042.

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) (hereinafter referred to as an exempt trust), 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 (unless specifically noted) 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)(1) provides, in part, 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.

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 §§ 2035 to 2038, inclusive.

Section 2041(b)(1) defines a general power of appointment as one that exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(a) of the Estate Tax Regulations provides that a decedent's gross estate includes the value of property in respect of which the decedent possessed, exercise, or released certain powers of appointment.

Section 20.2041-1(b)(1) provides, in part, that the term "power of appointment" includes all powers that are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust is a power of appointment. Further, a power

in a donee to remove or discharge a trustee and appoint himself may be a power of appointment.

Section 20.2041-1(c)(1) defines the term "general power of appointment" as any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. A power of appointment is not a general power if by its terms it is either --(a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate, or the creditors of his estate, or (b) expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

Section 20.2041-3(a)(1) provides that property subject to a power of appointment created after October 21, 1942, is includible in the gross estate of the holder of the power under varying conditions depending on whether the power is (i) general in nature, (ii) possessed at death, or (iii) exercised or released.

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.

### Analysis

In the present case, Trust is exempt from the GST tax because Trust was irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to Trust after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), Trust is not currently subject to the GST tax.

After the proposed modifications to Trust, Son and contingent beneficiaries have the same interests they had before the proposed modifications, except that property of Trust that would have been distributed free from trust to Son's issue, will be retained in a separate trust (i.e., Issue Trust) for the lifetime benefit of such beneficiary, unless otherwise terminated earlier on the date of the first to occur of the following events: (i) the distribution of the entire trust property, (ii) the death of the beneficiary, or (iii) the day prior to the date that is y years after the death of the last to die of Grantor's Children. With respect to each Issue Trust created, the beneficiary of such Issue Trust is granted a testamentary general power of appointment under § 2041(a)(2) and § 20.2041-3 over the Issue Trust, and each such Issue 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 Issue Trust to be includible in the gross estate of the beneficiary of such Issue Trust at his or her death under § 2041(a)(2) and § 20.2041-3, and such beneficiary will be the transferor of the trust for GST tax purposes under § 2652(a)(1). Therefore, the proposed modifications to 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.

Proposed modifications to Article Fifth, Article Ninth, and Article Eleventh are conforming modifications to Trust and are administrative in nature to apply equally to any Issue Trust thereafter created under the terms of Trust. Therefore, we conclude that the modifications to Article Fifth, Article Ninth, and Article Eleventh of Trust will not shift a beneficial interest in Trust to any beneficiary occupying a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modifications, and the modifications will not extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original governing instrument of Trust. See *Example 10* of § 26.2601-1(b)(4)(i)(E).

Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications to Trust or any Issue Trust subsequently created under the terms of Trust pursuant to the Date 3 Order do not cause Trust or any Issue Trust to lose GST exempt status or otherwise become subject to the GST tax.

## Ruling 2

### Law

Section 2001(a) provides that a tax is imposed 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 shall include the value of all property to the extent of the interest therein of the decedent at the time of his 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, generally, 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) the 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 the reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of the 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 the 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 (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the three-year period ending on the date of the decedent's death. Section 20.2038-1(a)(2) provides that § 2038 does not apply if the decedent's retained power could be exercised only with the consent of all parties having an interest in the property and the power adds nothing to the rights of the parties under local law.

In order for §§ 2035 through 2038 to apply, a decedent must have made a transfer of property or any interest therein under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. Grantor retained no interest in or power over Trust property after Date 1. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications to Trust will not result in the inclusion of the value of any property of Trust in the gross estate of Grantor for federal estate tax purposes.

#### Ruling 3 and Ruling 4

#### Law

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual.

Section 2511(a) provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations states that any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

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.

### Analysis

In this case, the proposed modifications to Trust do not change or transfer the interests of Son or any contingent beneficiaries of Trust, nor do they confer any new rights to any beneficiaries. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications to Trust do not constitute a transfer, direct or indirect, of property that will cause Son, Grantor, or any remainderman to be subject to gift tax under § 2501.

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, 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.

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) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel  
Passthroughs, Trusts, and Estates

*Melissa C. Liquerman*

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

Enclosure

Copy for § 6110 purposes

cc:

cc: