Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PTE:B04
PLR-120372-25
Date:
June 11, 2026

Legend

Settlor 1 =
Settlor 2 =
Son =
Daughter =
Grandchild 1 =
Grandchild 2 =
Grandchild 3 =
Grandchild 4 =
Grandchild 5 =
A a/k/a B =

Trust =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year =
Attorney =
State =
Statute =
Cite 1 =

Cite 2 =

Dear :

This responds to your authorized representative's letter dated November 14, 2025, and subsequent correspondence, requesting rulings on the income, gift, and generation-skipping transfer (GST) tax consequences of the proposed judicial reformation of Trust.

The facts and representations submitted are summarized as follows. On Date 1 in Year, a date after September 25, 1985, Settlor 1 and Settlor 2 (collectively "Settlors") created and funded Trust, an irrevocable trust, for the primary benefit of their descendants. Trust has GST potential. Each Settlor timely filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year, and each Settlor allocated their respective GST tax exemptions to the property transferred to Trust. It is represented that Settlors allocated sufficient GST tax exemption to the property transferred so that Trust has an inclusion ratio of zero. Trust is administered under the laws of State. Settlor 2 died on Date 2.

Settlors have two children, Son and Daughter. Daughter has two biological children, Grandchild 1 and Grandchild 2. Son has three biological children, Grandchild 3, Grandchild 4, and Grandchild 5. Son also has a stepchild, A a/k/a B (hereinafter referred to as A).

Contemporaneous and other evidence indicates the intent of Settlors was to include A and A's descendants in Trust's class of descendants. For example, another trust created by the Settlors, as well as a trust amended several times by the Settlors over the eighteen years after Son married A's mother and before Year, include A as a descendant of Settlors. Similarly, Settlors included A when they made annual gifts to their grandchildren during the eighteen years before Trust was created. Trust, however, as executed did not specifically provide for A. On Date 3, Settlor 1 petitioned State court for an order reforming Trust to be consistent with Settlors' intent to include A and A's descendants within the class of descendants.

On Date 4, State court issued an order in which court found that Settlors intended to include A and A's descendants within the class of descendants under Trust. State court ordered that Article XIX(D) be reformed to include a paragraph as follows:

> 3. Notwithstanding the … [definition of descendants], A, formerly known as B, stepchild of Son, shall be included in the class consisting of Son's children and the class consisting of the Settlors' grandchildren and should therefore be treated, for purposes of this Agreement, as a descendant of Son and further as a descendant of the Settlors. The descendants of A shall similarly be treated for purposes of this Agreement as descendants of Son and further as descendants of the Settlors. Further, any reference in this Agreement to the "Settlors' family," shall read to include both A and her descendants.

The State court order is contingent upon receiving a favorable private letter ruling from the IRS.

Rulings Requested

1. The proposed construction and reformation of Trust will not cause Trust to lose its status as a trust exempt from the GST transfer tax under Code § 2601.
2. The proposed construction and reformation of Trust will not cause any beneficiary to be treated as making a taxable gift of any portion of the Trust.
3. The proposed construction and reformation of Trust will not constitute a realization event for income tax purposes under Code § 1001 or otherwise give rise to taxable income or cause any beneficiary to recognize gain or loss from a sale or other disposition of property.

Law and Analysis

Ruling 1

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 2631 provides that every individual is allowed a GST exemption amount which may be allocated by the individual or the individual's executor to any property with respect to which the individual is the transferor.

Under § 1433 of the Tax Reform Act of 1986 (Act), the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, provided no additions (actual or constructive) were made to the trust after that date.

Trust became irrevocable after September 25, 1985. Grantor and Spouse each allocated their respective GST exemptions to their transfers to Trust, and it is represented they each allocated sufficient GST exemption so that Trust has an inclusion ratio of zero. No guidance has been issued concerning judicial modifications that may affect the status of trusts that are exempt from GST tax because sufficient GST exemption was allocated to the trust to create an inclusion ratio of zero. At a minimum, a modification that would not affect the GST status of a trust that was irrevocable on September 25, 1985, should similarly not affect the exempt status of such a trust. Accordingly, the following regulations are applied in determining whether the reformation of Trust pursuant to Court order will not cause Trust to lose its status as a trust exempt from the GST tax under Code § 2601.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(C) provides that a judicial construction of a governing instrument to resolve an ambiguity in the terms of the instrument or to correct a scrivener's error will not cause an exempt trust to be subject to the GST provisions if: (1) the judicial action involves a bona fide issue; and (2) the construction is consistent with applicable state law that would be applied by the highest court of the state.

In Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), the Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Court concluded that the decision of a state trial court as to an underlying issue of state law should not be controlling when applied to a federal statute. Rather, the highest court of the state is the best authority on the underlying substantive rule of state law to be applied in the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be state law after giving "proper regard" to the state trial court's determination and to relevant rulings of other courts of the state. In this respect, the federal agency may be said, in effect, to be sitting as a state court.

State Statute provides that a trustee may petition the court regarding any aspect of the affairs of a trust, including determining the construction of the trust instrument, determining the validity of a provision of the trust, and approving or directing the modification or termination of the trust. Courts in State may reform the terms of a trust if they do not express the settlor's actual intent at its execution. Cite 1. The Supreme Court of State construes trusts in a manner effecting the apparent intent of the settler. Cite 2.

In this case, an examination of the relevant Trust instrument, Settlors' estate plan, affidavits, and representations of the parties confirms that Settlors intended to include A and A's descendants in Trust's definition of the term "descendants." This intent, however, was not carried out in the drafting of Trust due to scrivener's error. Based on the facts submitted and the representations made, we conclude that the judicial action involves a bona fide issue, and the judicial reformation of Trust to include A and A's descendants in the definition of the term "descendants" is consistent with applicable State law, as applied by the highest court of State.

Accordingly, based upon the facts submitted and representations made, we conclude that the proposed construction and reformation of Trust, as described above, will not cause Trust to lose its status as a trust exempt from the GST tax under Code § 2601.

Ruling 2

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the gift tax shall apply 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 25.2511-1(c) provides 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.

In this case, an examination of the relevant Trust instrument, Settlors' estate plan, affidavits, and representations of the parties confirms that Settlors intended to include A and A's descendants in Trust's definition of the term "descendants." This intent was not carried out in the drafting of Trust due to scrivener's error. The purpose of the proposed amendment is to correct the scrivener's error, not to alter or modify the trust instrument. The amendment, as proposed, makes no changes to Trust as originally intended by Settlors. The beneficiaries' interests in Trust after the proposed amendment will remain the same as their interests in Trust as originally intended. Accordingly, based on the facts presented and the representations made, we conclude that the amendment of Trust is consistent with applicable State law that would be applied in the highest court of State. Thus, we rule that the proposed amendment to Trust, pursuant to State Court's order, will not cause any beneficiary to be treated as making a taxable gift of any portion of Trust.

Ruling 3

Section 61(a)(3) provides that gross income includes all income from whatever source derived, including gains derived from dealings in property.

Under section 1001(a), gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain. Similarly, the loss from the sale or other disposition of property is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. *Id.* Section 1001(b) provides that the amount realized from the sale or other disposition of property is the sum of any money received plus the fair market value of the property (other than money) received. Section 1001(c) requires a taxpayer to recognize the entire amount of gain or loss on the sale or exchange of property unless a Code provision provides otherwise.

Section 1.1001-1(a) provides that, unless provided otherwise in the Code, "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 as loss sustained."

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. Cottage Savings Association v. Commissioner, 499 U.S. 554, 566 (1991). A material difference exists when the exchanged properties embody legal entitlements different in kind or extent or if they confer different rights and powers. *Id.* at 565.

According to the information provided, the proposed amendment of Trust will entail no transfer of money or property. The amendment, as proposed, makes no changes to Trust as originally intended by Settlors. The beneficiaries' interests in Trust after the proposed amendment will remain the same as their interests in Trust as originally intended. Accordingly, based upon the facts submitted and representations made, we conclude that neither Trust nor the beneficiaries will realize gain or loss upon the amendment to Trust.

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.

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.

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.

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

Sincerely,

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

Enclosure (1)

Copy for § 6110 purposes.

cc: