

**Internal Revenue Service**

**Department of the Treasury**

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**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**

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**Date:**

June 24, 1999

Legend: Trustees:  
  
Grantor:  
Trust:  
  
Date 1:  
Company:  
Granddaughter:  
Statute:  
Date 2:  
Court:  
  
Date 3:

Dear

We received the letter dated \_\_\_\_\_, and later submissions on behalf of Trustees, requesting rulings concerning the income and generation-skipping transfer (GST) tax consequences of the proposed creation and funding of a revocable charitable subtrust. This letter responds to that request.

The facts and representations submitted are as follows. Grantor created Trust on Date 1 for the benefit of her family and charities. Trust was irrevocable on September 25, 1985, and it is represented that there have been no actual or constructive additions since that date. Any increase in value of the corpus of Trust since September 25, 1985, has been the result of accumulation of income and appreciation of corpus.

The assets of Trust consist primarily of a minority interest block of stock in Company, a privately-held corporation. The remaining assets of Trust consist of a cash reserve and cash equivalent investments.

Section 2.02 of Trust provides that the Trust created under the Trust Agreement is in all respects irrevocable and neither Grantor nor any other contributor to the trust estate, nor any other person is to have any power to modify, amend, or revoke the Trust in any respect.

Section 3.02 of Trust provides that the payment of any benefits, whether of income, principal or otherwise, shall be vested in the sole discretion of the trustees from time to time. Amounts of net income, capital gains or other proceeds or amounts of principal not paid out to a beneficiary shall be accumulated and added to principal. Section 3.02 of Trust further provides that payments among the members of a class of Individual Beneficiaries and Charitable Beneficiaries need not be equal either at the time of payment or at any future time and may be made to none, to one, to all, or to any number of members of the class in any proportions both as between beneficiaries of the same class and as between Individual Beneficiaries and Charitable Beneficiaries, all as determined by the trustees, in their sole discretion.

Section 3.03 of Trust provides that payments of income, principal or otherwise at any time may be made to any one or more members of the lowest numbered of the classes of Individual Beneficiaries described in section 3.03(1) which has one or more representative members then living and eligible to receive benefits and/or to any one or more members of the class of Charitable Beneficiaries described in section 3.03(2).

The Individual Beneficiaries currently eligible to receive distributions from Trust include the living issue of Granddaughter, all spouses of the then living issue of Granddaughter, and all spouses of the then deceased issue of Granddaughter (provided that, in the case of any such spouse that such spouse was living with and married to such deceased issue at the time of such issue's death). In the event that none of such persons is living at any time, Trust identifies and defines the membership of certain classes of other Individual Beneficiaries who shall thereupon be eligible to receive distributions.

It is represented that none of the children of Granddaughter is married and there are no deceased children of Granddaughter having living spouses.

Section 3.03(2) provides the potential Charitable Beneficiaries of Trust. The potential Charitable Beneficiaries are defined as:

such one or more of a group as may be selected by the trustees, in their sole discretion, from time to time, consisting only of corporations, associations and institutions which are organized and operated exclusively for religious, charitable, literary and educational purposes and projects and which are described both in Section 501(c)(3) of the Internal Revenue Code as the same exists at the execution of [Trust] or as it or a successor section may be amended from time to time and in Statute as

such statute exists at the execution of [Trust] or as it or a successor section may be amended from time to time; provided that no Charitable Beneficiary shall acquire any enforceable rights to receive income or principal or any vested interest therein against the trustees by virtue of this Section 3.03(2) or otherwise...Any payment actually determined on and made by the trustees to any Charitable Beneficiary shall be for its general tax-exempt purposes but without other restriction as to use.

Section 3.03(3) of Trust provides that the beneficiaries potentially eligible, subject to the trustees' determination, for any payments of income, principal or otherwise, shall include, at any time, all Charitable Beneficiaries as defined in Section 3.03(2) and all members of the class of Individual Beneficiaries then eligible under Section 3.03(1).

Section 3.03(4) of Trust provides that the discretionary powers of distribution of income and principal shall be broad enough to permit complete distribution of all the trust assets at any time, and in the event final distribution should be determined on by the trustees or legally required under paragraph 4.01 or otherwise, distribution shall be made by the trustees to any or all members of the class of Individual Beneficiaries and Charitable Beneficiaries then eligible under the other provisions of Article 3, as determined by the trustees, in their sole discretion.

Section 4.01 of Trust provides that it is Grantor's intent that Trust, subject to the remaining provisions of this Paragraph 4.01, shall endure in perpetuity. Any trust assets governed by a statute or rule of law of the situs of the trust (or the situs of tangible property, if any, which cannot as a matter of law be governed by the law of the situs of the trust) from time to time, under which statute or rule duration of the trust as set forth in the trust agreement or any suspension of the power of alienation legally adjudged to occur under Trust would render the trust invalid, shall be distributed on the last date on which said assets can validly remain in trust (and in the event such governing statute or rule depends upon specified lives in being, Grantor's intent would be to name the lives of all persons described as potential Individual Beneficiaries in Classes One to Six, inclusive, Section 3.03(1), as they would be determined at the date of the execution of Trust, and if a number of such lives less than all must be used, they should be selected in order of least age, taking the youngest first).

Section 5.01 of Trust provides that the individual trustees have the power to appoint one or more individual trustees, or a corporate trustee, or one or more individual trustees and a corporate trustee, as the case may be, to act with the trustee or trustees then acting.

Section 5.04(9) of Trust provides that the trustees have the power to divide Trust, determining values and designating particular assets for Grantor's beneficiaries to assign like or unlike properties to different beneficiaries or trusts, to create or hold

undivided interests in any property of Trust, and to make distributions and payments in cash or in kind or in both.

Section 5.04(11) of Trust provides that the trustees have the power to merge the assets of the trust with those of any other trust, by whomsoever created, maintained for the same potential beneficiaries upon the same terms.

It is represented that since the inception of Trust, the Trustees have made no distributions from Trust to any Individual Beneficiary. The Trustees have exercised their discretion to make distributions to various Charitable Beneficiaries.

The Trustees propose to create a revocable Charitable Subtrust to be administered exclusively for the benefit of potential Charitable Beneficiaries, and to transfer a portion of stock held by Trust to Charitable Subtrust.

It is represented that the dispositive provisions of Charitable Subtrust are the same in all material respects as the dispositive provisions of Trust, with two exceptions: (1) Individual Beneficiaries are excluded from the class of beneficiaries eligible to receive distributions from Charitable Subtrust and (2) the class of charitable organizations eligible to receive distributions from Charitable Subtrust is more narrowly defined than the class of organizations included within the definition of "Charitable Beneficiaries" under Trust.

It is represented that the administrative provisions of Charitable Subtrust differ in numerous respects from the administrative provisions of Trust by reason of the different nature and purpose of Charitable Subtrust. The differences are as follows: (1) Charitable Subtrust may be amended with the written consent of the Trustees of Trust, and Charitable Subtrust may be revoked in whole or in part by the Trustees of Trust; (2) Charitable Subtrust permits additional contributions by the Trustees of Trust but does not permit additional contributions by any other person or entity; and, (3) The Trustees of Charitable Subtrust are authorized to create organizations which are exempt from taxation under § 501(a) of the Internal Revenue Code, to which distributions may be made from Charitable Subtrust.

The original Trustees of Charitable Subtrust will be the same as the current Trustees of Trust. Charitable Subtrust provides that co-trustees and successor trustees of Charitable Subtrust shall be appointed by the Trustees of Trust. In addition, the Trustees of Trust have the power to remove any trustee of Charitable Subtrust.

On Date 2, Trustees petitioned Court for an Order authorizing the Trustees of Trust to create Charitable Subtrust, subject to the Trustees' receipt of a favorable private letter ruling concerning the funding of Charitable Subtrust. On Date 3, Court issued such an Order.

The following rulings are requested:

(1) Trust shall be treated as the owner of the Charitable Subtrust under Subchapter J of Chapter 1 of Subtitle A of the Code;

(2) The creation and funding of the Charitable Subtrust shall not cause Trust, the Charitable Subtrust, or any assets of Trust or the Charitable Subtrust to be subject to the generation-skipping transfer tax under Chapter 13 of Subtitle B of the Internal Revenue Code (§§ 2601, et seq.); and,

(3) If the Charitable Subtrust is revoked or otherwise terminated in such a manner that the assets of the Charitable Subtrust are restored to Trust, that event shall not be treated as an addition to Trust.

#### Income Tax Ruling - Ruling Request 1:

Based on the information provided and the representations made, we conclude that the funding of the Charitable Subtrust by Trust will not result in any federal income tax consequences to Trust and all items of income, deductions, and credits against tax of the Charitable Subtrust funded by Trust will be included in computing taxable income and credits of Trust.

#### Generation-Skipping Transfer Tax Rulings

##### Ruling Requests 2 & 3:

Section 2601 of the Code imposes a tax on every generation-skipping transfer made by the “transferor” to a “skip person.”

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the tax does not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust.

Section 2611(a) defines the term “generation-skipping transfer” as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate and gift tax.

Section 2612(c)(1) defines the term “direct skip” to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term “skip person” to mean - -

- (1) a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or
- (2) a trust - -
  - (A) if all interests in the trust are held by skip persons, or
  - (B) if - -
    - (i) there is no person holding an interest in the trust, and
    - (ii) at no time after the transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

Trust is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Grantor’s generation. Because, however, the Trust was irrevocable on September 25, 1985, and there have been no additions to it since that date, it is exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i).

An amendment to a trust, which was irrevocable on September 25, 1985, and, thus is exempt from the GST tax, will cause the trust to lose its exemption if the amendment modifies or otherwise changes the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of the Trust.

Based on the information submitted and the representations made, we conclude that the proposed modification of Trust will not modify or otherwise change the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of Trust. Thus, the proposed modification will not affect the exempt status of Trust for purposes of Chapter 13.

Accordingly, the creation and funding of the Charitable Subtrust shall not cause Trust, the Charitable Subtrust, or any assets of Trust or the Charitable Subtrust to be subject to the GST tax under Chapter 13 of Subtitle B of the Code.

In addition, we conclude that if the Charitable Subtrust is revoked or otherwise terminated in such a manner that the assets of the Charitable Subtrust are restored to Trust, that event will not constitute a post-September 25, 1985, addition to Trust for purposes of the GST tax imposed by § 2601.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under the cited provisions or under any other provision of the Code. Further, whether Trust is entitled to a deduction under § 642(c) for charitable payments made by the Charitable Subtrust is to be determined by the original terms of Trust concerning payments to charitable organizations.

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Christine E. Ellison

Christine E. Ellison, Chief  
Branch 7  
Office of Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures:  
Copy for § 6110 purposes