

**Internal Revenue Service**

Department of the Treasury

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**April 27, 2000**

LEGEND:

Decedent =

a =

Daughter =

Son =

b =

6B Trust =

6C Trust =

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c =

State =

d =

e =

f =

g =

h =

i =

j =

Court =

Dear Sir or Madam:

In a letter dated, January 10, 2000, you requested rulings concerning the generation-skipping transfer (GST) tax consequences of the clarification of a grandfathered trust . This letter responds to your request.

The information submitted and representations made are summarized as follows: Decedent died testate in a, survived by two children, Daughter and Son (collectively, Children). Clause Sixth of Decedent's will provides that Decedent's residuary estate is to be placed in equal trust funds so that there is one fund for Daughter, and her children and more remote descendants as are then living, and one fund for Son, and his children and more remote descendants who are then living. Paragraph A of Clause Sixth of Decedent's will provides that unless sooner terminated by a complete distribution of funds by the trustee as provided in Decedent's will, both trusts will terminate b years after the death of the survivor of Daughter and her children and more remote descendants living at Decedent's death, Son and his children and more remote descendants living at Decedent's death, and Decedent.

Paragraph B of Clause Sixth of Decedent's will sets forth the terms of the trust for the benefit of Daughter and her children and more remote descendants (the 6B Trust). Paragraph C sets forth the terms of the trust for the benefit of Son and his children and more remote descendants (the 6C Trust). Except for the beneficiaries, the

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provisions of the 6B Trust and the 6C Trust (collectively, the Trusts) are identical. Those provisions are summarized as follows:

Until the termination of the 6B Trust and the 6C Trust, the trustees have the discretion to pay all or so much, if any, of the net income and principal as the trustees in their discretion deem proper to and among Children and their children and more remote descendants who may be living from time to time in such proportions and amounts as the trustees in their discretion deem proper, with power to omit from participation any one or more of the persons among whom the trustees have power to make payment. Any income not distributed by the trustees in any calendar year is to be added to principal.

On the termination of a Trust at the time set forth in Paragraph A of Clause Sixth of Decedent's will, the trustees are to distribute the principal *per stirpes* to Children's children and more remote descendants then living, subject, however, to the power in the trustees in their discretion within c months after the termination of a Trust, to increase or decrease the share of one or more distributees by such amounts as the trustees in their discretion deem appropriate in order to adjust any inequalities in distributions of income or principal previously made to any one or more of the distributees, or any of their ancestors or descendants, and the trustees in their discretion, may in determining such amounts take into consideration the dates at which previous distributions have been made. If at that time no child or more remote descendant of Children is living, the trustees are to distribute the Trust fund *per stirpes* to the then living children and more remote descendants of Children; and if none of such persons is living, to and among those persons who would under the Statute of Distributions in force in State when Decedent's will was executed be Decedent's next of kin if Decedent died immediately after such time.

If at any time after Decedent's death and before the termination of the 6B Trust and the 6C Trust at the time set forth in Paragraph A of Clause Sixth of Decedent's will, neither Daughter or Son nor any child or more remote descendant of Daughter or Son is living, then at that time, the trustees are to add the 6B Trust to the 6C Trust, or vice versa, as the case may be, if it is then in existence and if not, the trustees are to pay and distribute the Trust to and among those persons who would under the Statute of Distributions in force in State when Decedent's will was executed be Decedent's next of kin if Decedent died immediately after the death of the last of Children, Children's children, and Children's more remote descendants.

Daughter died in d, survived by e children, all of whom are living. One of Daughter's children has e children, all of whom are adopted. Son died in f, survived by g children all of whom are living. One of Son's children has h children, i of whom are adopted. At this time, no other descendants of Decedent are adopted, although it is possible that future adoptions may occur.

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For many years, it has been the practice of the trustees of the 6B Trust to distribute all of the 6B Trust net income in equal shares to the e children of Daughter. Similarly, the trustees of the 6C Trust have distributed all of the net income of the 6C Trust in equal shares to the g children of Son. Distributions of principal have been infrequent and have been made only under extraordinary circumstances. At this point, the trustees have made no distributions to any of the grandchildren of Daughter or Son.

Following the deaths of the current distributees, the trustees would like to continue their policy of equal distributions. Because, however, Decedent's will is silent as to whether the permissible beneficiaries of the Trusts include adopted issue, the trustees determined it was necessary to ascertain whether adopted issue are beneficiaries of the Trusts. The trustees, therefore, instituted judicial proceedings to obtain a determination that adopted grandchildren and more remote descendants are included as beneficiaries of the Trusts.

On j, the Court entered an order that the terms "children or more remote descendants," "ancestors or descendants," and "next of kin" when used in the Trusts created under Clauses Sixth B and Sixth C of Decedent's will, are confirmed and clarified to include any person legally adopted by a Child or more remote descendant of Decedent, and the issue, whether adopted or not, or any such adopted person, provided that this Judgment takes effect on the issuance of a ruling by the Internal Revenue Service that such clarification does not result in application of the federal generation-skipping transfer tax to the Trusts or any payments therefrom.

It is represented that the Trusts were irrevocable on September 25, 1985, and that there have been no additions (actual or constructive) to them since that date.

You have requested a ruling that the Court's order declaring the rights of the beneficiaries of the Trusts will not cause the Trusts to become subject to the GST tax.

Section 2601 of the Internal Revenue 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 26.2611-1 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

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recent transfer subject to the estate or 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 such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

The Trusts are generation-skipping trusts because they provide for distributions to more than one generation of beneficiaries below Decedent's generation. Because, however, the Trusts were irrevocable on September 25, 1985, and there have been no additions (actual or constructive ) to them since that date, they have been exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i). You have requested a ruling that the Court Order declaring the rights of the beneficiaries of the Trusts will not cause the Trusts to become subject to the GST tax.

An amendment to an exempt trust that modifies or otherwise changes the quality, value, or timing of any of the powers, or beneficial interests, rights, or expectancies originally provided under the terms of the trust will cause the trust to lose its exemption from the GST tax.

We believe that the judicial action in this case involved a bona fide issue concerning the terms of the Trusts and that the Court Order is consistent with applicable State law that would be applied by the highest court of State. Commissioner v. Estate of Bosch, 387 U.S. 456 (1967). Accordingly, based on the information submitted and the representations made, we conclude that the Court Order does not alter the intended quality, value, or timing of the interests Decedent created in the Trusts. Further, we conclude that the Court's declaration of the rights of the beneficiaries will not cause the Trusts, or any distributions from the Trusts, to be subject to the GST tax, provided no

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additions are made to the Trusts.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Christine E. Ellison

Christine E. Ellison  
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