

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4/PLR-111514-00

Date:

JANUARY 19, 2001

In Re:

Legend:

- Settlor -
- Trustee -
- Spouse -
- Child #1 -
- Child #2 -
- Trust -
- Date 1 -
- Date 2 -
- Date 3 -

Dear :

This is in reference to the June 2, 2000 correspondence from your authorized representative, requesting a ruling regarding the effect of the judicial construction of a trust instrument for federal generation-skipping transfer (GST) tax purposes.

The facts submitted are as follows:

On Date 1, Settlor created and funded Trust, a revocable trust, over which Settlor retained the unlimited right to withdraw income and principal. Upon Settlor's death in 1951, Trust became irrevocable. Trustee is the trustee of Trust, which is governed by the laws of Michigan.

Article THIRD (1) of Trust provides that, upon Settlor's death, the net income after payment of expenses will be paid to Spouse, Child #1, and Child #2, "share and share alike." Article THIRD (2) provides that, upon Spouse's death, the trustee will terminate Trust and divide the assets between Child #1 and Child #2 "share and share alike." Child #2's share is to be held in trust until Child #2 reaches age 45. Article THIRD (2) further provides that in the event that either or both of Child #1 and Child #2 "shall fail to take for any reason whatsoever, then [the child's share of the trust is to be distributed] to his or her issue per stirpes, absolutely and forever." Finally, Article THIRD (2) states:

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In the event either of my children shall have died prior to the termination and distribution as hereinbefore provided, without issue surviving, then the entire corpus and undistributed remains, if any, shall be forthwith assigned, transferred and paid over to the survivor of my said children or failing such children to their issue per stirpes.

Child #1 died on Date 2, survived by issue. Spouse and Child #2 are still living. The Trustee became concerned regarding an ambiguity pertaining to the disposition of Trust income during Spouse's life. Specifically, the Trust instrument does not provide for the disposition of a deceased child's share of income, if the child predeceases Spouse. The use of the term "share and share alike" in Article THIRD (1) raises the question as to whether, when Child #1 predeceased Spouse, Child #1's interest in the income of Trust was to pass to Spouse and Child #2, or whether that income interest was to pass to Child #1's issue, per stirpes. On the other hand, it is clear that a predeceased child's share of corpus is to pass to the child's issue on termination of the Trust.

In order to resolve this ambiguity, Trustee obtained an order from the appropriate local court on Date 3 construing the ambiguous provisions. The court construed the provisions of Trust to require that the trustee pay the net income that was paid to Child #1 as beneficiary, to the issue of Child #1, per stirpes. The order is contingent upon the Internal Revenue Service issuing a ruling that the disposition of trust assets consistent with such construction will not subject the trust to the generation-skipping transfer tax.

You represent that no additions have been made to Trust after September 25, 1985.

You request a ruling that the court order construing the dispositive provisions of Trust will not affect the exempt status of Trust for generation-skipping transfer tax purposes, and will not result in a transfer of property that will subject Trust, or distributions thereunder, to the generation-skipping transfer tax imposed under § 2601 of the Internal Revenue Code.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 26, 1986.

A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) 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 trust where the property passes to a skip person with respect to the transferor of the property. 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 made by a transferor to a skip

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person.

Under § 1431(a) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax does not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985. However, this exemption does not apply to additions (actual or constructive) that are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(iv) states that, if an addition is made after September 25, 1985, to a trust which was irrevocable on September 25, 1985, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the GST tax provisions. If an addition is made, the trust is thereafter deemed to consist of two portions, a portion not subject to the GST tax and a portion subject to the GST tax.

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 generation-skipping transfer tax will not cause the trust to lose its exempt status.

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 scrivener's error will not cause an exempt trust to lose its exempt status provided the judicial action involves a bona fide issue, and the construction is consistent with applicable state law that would be applied by the highest court of the state.

In the present case, Trust was irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to the trust after that date.

In action for construction of a will, the sole objective is to ascertain and effectuate the intent of the testator as it applied to language of the will where there is an ambiguity in the language used and the intent of the testator is unknown or uncertain, so that rules of construction must be applied to ascertain such intention. Hund v. Holmes, 235 N.W.2d 331, 334 (Mich. 1975). Where there is an ambiguity, the court looks outside the four corners of a will in order to determine the testator's intent and may consider surrounding circumstances and rules of construction in establishing intent. In re Kremlick Estate, 331 N.W.2d 228, 230 (Mich. 1983). The construction of a will is favored that will make distribution as nearly conform to the general rule of inheritance as language will permit. In re Horrie's Estate, 113 N.W.2d 793, 796 (Mich. 1962). Also, where there is an ambiguity in a will, the construction should be given that will result in equal distribution to the heirs. Southgate v. Karp, 118 N.W. 600, 602 (Mich. 1908).

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In this case, the court construed Trust to require that after the death of Child 1 and prior to termination of the Trust, the trustee is to pay the net income that had been paid to Child #1, during his life, to the issue of Child #1, per stirpes. This construction is consistent with the disposition of the trust corpus on termination of the Trust.

We conclude that the terms of the Trust present a bona fide issue regarding the disposition of Child #1's share of Trust income on the death of Child #1, with issue surviving, prior to termination of the Trust. Further, we conclude that the court's construction of the Trust is consistent with applicable state law that would be applied by the highest court of the state.

Accordingly, based on the facts submitted and the representations made, the court order construing Trust will not affect the exempt status of Trust for generation-skipping transfer tax purposes, and will not result in a transfer of property that will subject Trust, or distributions thereunder, to the generation-skipping transfer tax imposed under § 2601.

A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters.

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 the 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. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

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.

Sincerely yours,
GEORGE MASNIK
Chief, Branch 4
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes