Internal Revenue Service

Department of the Treasury

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Number: **200119027**
Release Date: 5/11/2001
Index No.: 2601-00.00

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CC:PSI:4 - PLR-108566-00

Date: February 07, 2001

Re:

Legend:

Decedent =
Date 1 =
Date 2 =
Trust =

X =
Date 3 =

Dear :

This is in response to a letter dated April 13, 2000, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of the amendments to the Trust agreement.

Facts

The facts submitted and representations made are as follows. Decedent created a revocable inter vivos trust on Date 1. On Date 2, Decedent created another revocable inter vivos trust. Subsequently, Decedent executed an amended and restated trust agreement (Trust) which amended and consolidated the two trusts.

Under the terms of Trust as in effect on October 22, 1986, upon Decedent's death, the trustee was directed to distribute certain pecuniary amounts to specified charities and the sum of $X to a charitable lead unitrust (CLUT) that is intended to satisfy the requirements of § 2055(e)(2)(B) of the Code and § 20.2055-2(e)(2)(vii) of the Estate Tax Regulations. Under the terms of the CLUT, the trustee was to pay a unitrust amount equal to 6% of the net fair market value of the trust, determined annually, to a charity for a period of 10 years. The residue of the Trust corpus was to pass to a Marital Trust, providing income to Decedent's spouse for life. On the termination of the CLUT (after the expiration of 10 years) and on the termination of the Marital Trust (on the death of Decedent's spouse) the corpus of each trust was to be divided into 100 equal parts, and the parts were to be distributed among specified individual

beneficiaries or, if a beneficiary predeceased termination, among that beneficiary's appointees pursuant to the exercise of a limited power of appointment, or, in default of such appointment, among that beneficiary's issue, or, if none, among other specified remainder beneficiaries. These specified remainder beneficiaries included Decedent's nephews and nieces (who are not "skip persons" as defined in § 2613(a)) and his great-nephews and great-nieces (who are skip persons that are all assigned to the same generation under § 2651(b)).

On November 18, 1986, Decedent amended Trust. The amendments included the following:

(1) One fiduciary was removed;

(2) A charity and an individual were added as the recipients of pre-residuary pecuniary bequests; [The individual was not a skip person.]

(3) The bequest to the CLUT was increased by $X (and as a result, the amount passing to the residuary Marital Trust was reduced by that amount);

(4) Three individuals were deleted as remainder beneficiaries of the CLUT and the Marital Trust. These individuals were skip persons as defined in § 2613(a). As a result, the share of those individuals (both skip and non-skip persons) retained as remainder beneficiaries increased proportionately. Overall, the aggregate portion of the remainder interest in each trust passing to skip persons was reduced from approximately 21.25% of the corpus of each trust to 15%.

(5) If a designated remainder beneficiary predeceased the termination of either the CLUT or the Marital Trust, the beneficiary's interest will pass pursuant to the exercise of a general power of appointment, or, if not effectively appointed, then to the beneficiary's estate.

Subsequently, on December 12, 1986, Decedent amended the Trust again to provide that one of the pre-residuary charitable bequests was to be paid in the form of an endowment fund. In addition, an individual was added as a recipient of a pre-residuary pecuniary bequest. The individual was not a skip person.

Decedent died unexpectedly on Date 3 prior to January 1, 1987. His spouse is still living.

The trustees have requested a ruling that the amendments made by Decedent after October 21, 1986, will not cause Trust or distributions from Trust to be subject to the GST tax.

Law

Section 2601 imposes a tax on each generation-skipping transfer made by a transferor to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(B) of the Tax Reform Act and § 26.2601-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to any transfer under a will or revocable trust executed before October 22, 1986, provided the document is not amended after October 21, 1986, in any respect which results in the creation of, or an increase in the amount of, a generation-skipping transfer, and the decedent dies before January 1, 1987. Section 26.2601-1(b)(2)(v) provides that, in determining whether a particular amendment to a will or revocable trust creates, or increases the amount of, a GST, the effect of the instrument in existence on October 21, 1986, is measured against the effect of the instrument in existence on the date of death of the decedent or on any prior generation-skipping transfer. If the effect of an amendment cannot be immediately determined, it is deemed to create or increase the amount of a GST until a determination can be made.

Under § 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i), the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. 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)(4)(i), provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action will not cause a trust that was irrevocable on September 25, 1985, to lose its exempt status.

Under § 26.2601-1(b)(4)(i)(D)(1) a modification will not cause a trust that was irrevocable on September 25, 1985, 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. 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 or the creation of a new GST. To determine whether a particular amendment to a trust shifts 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.

Section 26.2601-1(b)(4)(i)(E), Example 7, involves a trust that is irrevocable on or before September 25, 1985, under which trust income is to be distributed equally to A, B, and C, who are skip persons assigned to the same generation. The trust is amended to increase A's share of trust income. The example concludes, among other things, that the modification will not result in the increase in the amount of a generation-skipping transfer. Accordingly, the trust as modified will not be subject to chapter 13.

In general, the rules contained in §26.2601-1(b)(4)(D) (including § 26.2601-1(b)(4)(E), Example 7) for determining if a modification creates or increases the amount of a GST with respect to trusts that were irrevocable on September 25,1985, and the rules contained in § 26.2601-1(b)(2) for determining whether a modification creates or increases the amount of a GST with respect to a will or revocable trust amended after October 21, 1986, are to be applied in a consistent manner. See Preamble to T.D. 8912, 65 Fed. Reg. 79735, 79737 (December 20, 2000).

Analysis

In the present case, Trust, a revocable trust, was executed before October 22, 1986, and was amended by Decedent on November 18, 1986, and December 12, 1986. Decedent died before January 1, 1987. Therefore, under § 1433(b)(2)(B) of the Tax Reform Act and § 26.2601-1(b)(2)(i), the GST tax will not apply to Trust, provided the amendments made after October 21, 1986, did not result in the creation of, or an increase in the amount of, a GST.

In the instant case, the amendments to Trust did not create or increase the amount of any GST under the rules contained in §§ 26.2601-1(b)(2) and 26.2601-1(b)(4)(D). For example, as discussed above, the amendment deleting certain remainder beneficiaries who were skip persons increased the shares passing to certain other skip persons who were assigned to the same generation as the skip persons who were eliminated. The shares of nonskip persons assigned to generations above the generation of those beneficiaries who were deleted were also increased. Further, the interests of the designated remainder beneficiaries were changed from contingent interests (dependent on surviving termination of the trust) to vested interests passing to the estate of each of the respective beneficiaries (or subject to a general power of appointment) if he or she fails to survive. Thus, notwithstanding that the CLUT and the Marital Trust terminate at different times, there is no possibility that the shift of funds from the Marital Trust to the CLUT, could result in any increase in amounts passing to the issue of a designated remainder beneficiary.

Accordingly, the amendments as described above, did not cause Trust to lose exempt status for GST tax purposes.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions 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.

Sincerely yours,
George L. Masnik
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes