

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-128857-00

Date:
March 27, 2001

Re:

Legend:

Trust T =

Decedent =

Date =

Child 1 =

Child 2 =

Child 3 =

Child 4 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Bank =

State =

Dear :

This is in response to your letter dated November 30, 2000, in which you requested a ruling concerning the generation-skipping transfer tax consequences of the proposed partitions of certain trusts into separate trusts.

Facts:

The facts are represented to be as follows:

Decedent's mother died prior to 1985, survived by Decedent and Decedent's two siblings. Item V of Decedent's mother's will established Trust T, which was divided pursuant to the terms of the will into three separate shares, one for Decedent and one for each of her two siblings. Under Item V(d) of Decedent's mother's will, Decedent was given a testamentary limited power to appoint her share of Trust T to one or more of her descendants or to charity, either outright or in trust. Under Item V(f) of Decedent's mother's will, any trust created under the provisions of the will was to terminate at the time required by the State's rule against perpetuities.

Decedent died on Date, survived by four children, all of whom were born before the death of Decedent's mother. Under Article FOURTH of her will, Decedent exercised her power of appointment over her share of Trust T by appointing the property in further trust. The Trustees were directed to divide the property into four separate trusts. Trust 1 was created for the benefit of the issue of Child 1, Trust 2 was created for the benefit of the issue of Child 2, Trust 3 was created for the benefit of the issue of Child 3, and Trust 4 was created for the benefit of the issue of Child 4.

Under Article FOURTH (A)(1) of Decedent's will, if a child of Decedent has no issue, during the life of such child and until such time as such child has issue, Trustees are to pay to such child all the income of his or her trust.

Under Article FOURTH (A)(2) of Decedent's will, if a child of Decedent has issue, during the life of such child the Trustees are to pay to each such issue, per stirpes, such part or parts or all of the income to which such issue is entitled as the Trustees may in their sole discretion appoint until such issue attains age 21, at which time such issue is to receive all of the income of his or her per stirpital share.

Under Article FOURTH (A)(3) of Decedent's will, upon the death of a child of Decedent leaving issue (or upon Decedent's death if such child predeceased Decedent), the Trustees are to continue to pay the income to such issue as provided in paragraph (2) above and are to distribute one-third of such issue's share of principal to such issue when he or she attains age 30; an additional one-third when he or she attains age 35; and all when he or she attains age 40.

Under Article FOURTH (A)(4) of Decedent's will, upon the death of a child of Decedent leaving no issue (and upon the death of all issue of a child of Decedent who dies leaving issue, if any property is then held in trust hereunder), the Trustees are to distribute the then remaining principal of that child's trust, if any, in equal shares, per stirpes, to the surviving beneficiaries of the other trusts created under Article FOURTH. If the beneficiary is a beneficiary of another trust created under Article Fourth, the share is to be added to the principal of the other trust.

Under Article FOURTH (A)(5) of Decedent's will, unless terminated earlier under Article FOURTH (A)(3), each trust is to terminate not later than 21 years after the death of the last to die of the children of Decedent who were living at the time of Decedent's mother's death. At such time, the remaining principal and undistributed income, if any, are to be vested in and distributed to those persons who at such time are enjoying or entitled to enjoy the use and benefit of the trust, in proportions in which they are so enjoying or entitled to enjoy the same

irrespective of their attained ages.

At the present time, Child 1 is living and has four living children who are 25, 26, 30, and 32 years of age. Under the terms of Decedent's will, the income of Trust 1 is divided annually into four equal shares and distributed to the four children of Child 1. At the death of Child 1, if no additional children are born to or adopted by her before that time, the corpus of Trust 1 will be divided into four shares, one for each child, and held in trust or distributed outright, in whole or in part, under Article FOURTH (A)(3), (A)(4) and (A)(5) of Decedent's will.

At the present time, Child 2 is living and has three living children who are 16, 30, and 32 years of age. Under the terms of Decedent's will, the income of Trust 2 is divided annually into three equal shares. The share of the younger child is applied for his benefit as Trustees, in their sole discretion determine, and the shares of the 30-year-old and the 32-year old are distributed to them. At the death of Child 2, if no additional children are born to or adopted by him before that time, the corpus of Trust 2 will be divided into three shares, one for each child, and held in trust or distributed outright, in whole or in part, under Article FOURTH (A)(3), (A)(4) and (A)(5) of Decedent's will.

At the present time, Child 3 is living and has two living children who are 16 and 17 years of age. Under the terms of Decedent's will, the income of Trust 3 is divided annually into two equal shares and applied for the benefit of the children as Trustees, in their sole discretion, determine. At the death of Child 3, if no additional children are born to or adopted by her before that time, the corpus of Trust 3 will be divided into two shares, one for each child, and held in trust or distributed outright, in whole or in part, under Article FOURTH (A)(3), (A)(4) and (A)(5) of Decedent's will.

At the present time, Child 4 is living and has two living children who are 22 and 24 years of age. Under the terms of Decedent's will, the income of Trust 4 is divided annually into two equal shares and distributed to the two children of Child 4. At the death of Child 4, if no additional children are born to or adopted by him before that time, the corpus of Trust 4 will be divided into two shares, one for each child, and held in trust or distributed outright, in whole or in part, under Article FOURTH (A)(3), (A)(4) and (A)(5) of Decedent's will.

Child 1 and Bank are the Trustees of Trust 1, Trust 2, and Trust 3. Child 4 is the Trustee of Trust 4. The Trustees and the beneficiaries propose to partition each trust into separate trusts for the benefit of each of Decedent's living grandchildren. The purpose of the partitions is to facilitate the pursuit of different investment strategies by the beneficiaries. Each new separate trust will be funded with a pro rata portion of the assets of its predecessor trust, and each new separate trust will continue to be governed by the provisions of Decedent's will.

Trust 1 will be partitioned into four separate trusts for the benefit of Child 1's children. Each child of Child 1 will continue to be entitled to the income of his or her separate trust under Article FOURTH (A)(2) of Decedent's will and the principal of his or her separate trust under Article FOURTH (A)(3). Unless terminated earlier under Article FOURTH (A)(3), each separate trust will terminate 21 years after the last of Decedent's four children to die. Although it is not expected that additional children will be born to or adopted by Child 1 prior to her death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the four trusts created out of Trust 1, so that the five trusts would be of equal value. The trust for the afterborn child would

also be governed by the provisions of Decedent's will.

Trust 2 will be partitioned into three separate trusts for the benefit of Child 2's children. Each child of Child 2 will continue to be entitled to the income of his or her separate trust under Article FOURTH (A)(2) of Decedent's will and the principal of his or her separate trust under Article FOURTH (A)(3). Unless terminated earlier under Article FOURTH (A)(3), each separate trust will terminate 21 years after the last of Decedent's four children to die. Although it is not expected that additional children will be born to or adopted by Child 2 prior to his death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the three trusts created out of Trust 2, so that the four trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

Trust 3 will be partitioned into two separate trusts for the benefit of Child 3's children. Each child of Child 3 will continue to be entitled to the income of his or her separate trust under Article FOURTH (A)(2) of Decedent's will and the principal of his or her separate trust under Article FOURTH (A)(3). Unless terminated earlier under Article FOURTH (A)(3), each separate trust will terminate 21 years after the last of Decedent's four children to die. Although it is not expected that additional children will be born to or adopted by Child 3 prior to her death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the two trusts created out of Trust 3, so that the three trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

Trust 4 will be partitioned into two separate trusts for the benefit of Child 4's children. Each child of Child 4 will continue to be entitled to the income of his or her separate trust under Article FOURTH (A)(2) of Decedent's will and the principal of his or her separate trust under Article FOURTH (A)(3). Unless terminated earlier under Article FOURTH (A)(3), each separate trust will terminate 21 years after the last of Decedent's four children to die. Although it is not expected that additional children will be born to or adopted by Child 4 prior to his death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the two trusts created out of Trust 4, so that the three trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

The Trustees will petition the local court in State to appoint guardians ad litem for the minor grandchildren of Decedent, any unborn (afterborn) grandchildren of Decedent, and any unborn descendants of a grandchild of Decedent who might predecease his or her parent who is a child of the Decedent; to make Decedent's children parties to the proceeding; and to approve the partition of Trust 1, Trust 2, Trust 3, and Trust 4 in the manner described above.

Ruling Request:

The Trustees have requested a ruling that the successor trusts to be created pursuant to the proposed partitions, and any successor trusts that may be created for afterborn children, will remain exempt from the application of the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

Law and Analysis:

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under §1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax (GSTT) 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, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added). Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor held a power with respect to the trust that would have caused the value of the trust to be included in the settlor's gross estate for Federal estate tax purposes by reason of § 2038 or by reason of § 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 with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b) will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GSTT 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 transfer or the creation of a new GST transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, provides that if the division of a trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in §2651) than the person or persons who held the beneficial interest prior to the division and the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust, then the two partitioned trusts will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

In a previously issued private letter ruling, we concluded that: (1) Trust T was irrevocable on September 25, 1985; (2) if no additions were made to Trust T after September 25, 1985, transfers from Trust T would be exempt from the GSTT; and (3) Decedent's exercise of her testamentary limited power of appointment over her share of Trust T by creating Trust 1, Trust 2, Trust 3, and Trust 4 did not cause Trust T, Trust 1, Trust 2, Trust 3, or Trust 4 to lose its exempt status for GSTT purposes.

For purposes of the present case, it is represented that no additions (actual or constructive) were made to Trust T after September 25, 1985, and no additions (actual or constructive) were made to Trust 1, Trust 2, Trust 3, or Trust 4 since Decedent's death.

In this case, the proposed partitions of Trust 1, Trust 2, Trust 3, and Trust 4 by the Trustees will not result in a shift of any beneficial interest in either trust to any beneficiary who

occupies a generation lower than the persons holding the beneficial interests prior to the division. Further, the proposed partitions will not extend the time for vesting of any beneficial interest in either trust beyond the period provided for in the original trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed partition of Trust 1 into four separate trusts, the proposed partition of Trust 2 into three separate trusts, the proposed partition of Trust 3 into two separate trusts, and the proposed partition of Trust 4 into two separate trusts, will not cause either trust to lose its exempt status for generation-skipping transfer tax purposes. In addition, if successor trusts are created for afterborn children as described above, the new successor trusts will not be subject to the GSTT and will not cause the partitioned trusts to lose their exempt GSTT status.

The ruling contained in this letter is 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 the ruling, it is subject to verification on examination.

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.

The 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.

Sincerely yours,
KATHERINE A. MELLODY
Senior Technician Reviewer
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes