

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4-PLR-118326-00  
Date:

August 21, 2001

Re:

Legend:

Settlor =  
Spouse =  
Daughter 1 =  
Daughter 2 =  
Grandchild =  
Trust =

Family Trust 1 =  
Family Trust 2 =  
State =  
Date 1 =  
Date 2 =  
Date 3 =  
\$X =

Dear :

This is in response to your letter of January 25, 2001, and prior correspondence, in which you request a ruling on the application of the generation-skipping transfer (GST) tax provisions of Chapter 13 of the Internal Revenue Code to the proposed modification to Trust.

On Date 1, Settlor created Trust, an irrevocable inter vivos trust, for the benefit of Spouse and Settlor's issue.

Article III, Section 3.01 of Trust provides that after the death of Settlor, Trustees will pay to or for the benefit of Spouse, an amount that will have the same purchasing power as \$X had in the month and year of the execution of Trust. In case of remarriage or divorce, Spouse ceases to be the income beneficiary and Trust is to be administered as if Spouse had died. Trustees may invade principal to make the required payments. The trustees may make discretionary payments of income to Settlor's daughters at any time providing that the income payments do not unreasonably divert working funds from

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the business of the trust estate. Any payments must be made equally to Daughter 1 and Daughter 2. Any undistributed income is to be accumulated and added to principal.

Section 3.02 provides that during the life of Spouse, the trustees may invade principal for Spouse's health, maintenance or support. In addition, trustees may invade principal for the benefit of Daughter 1 and Daughter 2, their spouses, and their children for their health, support, and maintenance.

Section 3.03 provides that after Spouse's death, the trustees, at their discretion, are to pay or apply for the benefit of Daughter 1 and Daughter 2 up to the total net income of Trust for their proper care, maintenance or support. Any undistributed income is to be added to principal. Payments made under this paragraph need not be equal and any payments are not to be deducted from Daughter 1 or Daughter 2's distributive share of principal on termination of Trust. The trustees may, in their discretion, distribute principal to Daughter 1 and Daughter 2 if they are in need of funds for their proper care, maintenance or support.

Section 3.04 provides that at the death of either daughter, Trust is to be divided into two equal shares. One share is to remain in trust for the benefit of the surviving daughter. The other share is to be held in trust for the benefit of the then living children of the deceased daughter and for the then surviving issue of any deceased child or children of the deceased daughter. At the death of the surviving daughter, that daughter's share is to be held in trust for the benefit of the then living children of the deceased daughter and for the then surviving issue of any deceased child or children of the deceased daughter. If no issue survive the first daughter to die, her share of the trust estate will be added to the other daughter's share. If both daughters die without leaving issue, the trust estate will terminate and be distributed to the then living heirs of Settlor according to the laws of descent and distribution in State.

Section 3.05 provides that after a daughter's death, the trustees are directed to pay to or apply for the benefit of such deceased daughter's child or children the net income of that share of Trust as the trustees in their discretion deem necessary or advisable for the proper care, maintenance, support, and education of such child or children. The balance of the net income that is not distributed during the year, is to be accumulated and added to principal.

Section 3.06 provides that each share of Trust terminates when no child of a deceased daughter is living who is under age 30. On termination of a share, one equal share is to be distributed to each child, then surviving, of the deceased daughter; and one equal share is to be distributed to the surviving issue of each deceased child of the deceased daughter, per stirpes. After Spouse's death, the trustees may invade principal for the benefit of grandchildren for their care, maintenance, support or education.

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Article VIII, Section 8.07 provides that if any of the individuals appointed as trustees fail to qualify or act as co-trustees for any reason, Settlor shall appoint a successor trustee. Should any individual trustee fail to qualify or cease to act after the death of Settlor, the remaining individual trustee and the corporate trustee shall agree upon and appoint a successor trustee.

Section 8.08 provides that if the corporate trustee should fail to qualify or cease to act as co-trustee for any reason, the two individual co-trustees shall agree upon the appointment of a corporate trustee.

Article X provides that if Trust does not terminate earlier, Trust will terminate 21 years after the death of the last survivor of Settlor and all issue of Settlor living as of the date Trust becomes irrevocable. Settlor died on Date 2. Spouse disclaimed her interest on Date 3.

Daughter 1 and Daughter 2 are the current income beneficiaries of Trust. Daughter 2 and Grandchild are the current trustees. The trustees propose to partition Trust into Family Trust 1 and Family Trust 2 to allow each family to separately manage the trust assets of that family's respective trust. The trust provisions of the new trusts will be identical to Trust except for a modification to the trustees provisions to provide that an individual trustee may serve alone or may appoint a successor corporate trustee.

You have requested the following rulings:

1. The partitioning of Trust into Family Trust 1 and Family Trust 2 will not:

(A) shift a beneficial interest in Trust to any beneficiary who occupies a lower generation (as defined in § 2561) than the person or persons who held the beneficial interest prior to the partition;

(B) extend the time for vesting of any beneficial interest in the trust beyond the period provided for in Trust; or

(C) result in a deemed contribution being made to Family Trust 1 or Family Trust 2.

2. The partitioned trusts, Family Trust 1 and Family Trust 2, will have the same status as Trust for GST purposes under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (the 1986 Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations.

You represent that Trust was created before September 25, 1985, and that there have been no additions to Trust after that date.

Section 2601 imposes a tax on every generation-skipping transfer.

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Section 1433(b)(2)(A) of the 1986 Act and § 26.2601-1(b)(1)(i) provide that the generation-skipping transfer tax shall not apply to any generation-skipping 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).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(1)(ii) (B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust, which is excluded from the application of chapter 13 by § 1433(b)(2)(A) of the 1986 Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraphs (b)(4)(i)(A), (B), or (C) of this subsection) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, but only if –

(1) 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

(2) 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.

In this case, Trust was created and irrevocable before September 25, 1985. Also, it is represented that no additions have been made to Trust since September 25, 1985. Consequently, Trust is currently exempt from GST tax.

The proposed division of Trust into two trusts will not shift any beneficial interest in 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. In addition, the proposed division of Trust will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trust. Further, the modification will not result in a deemed contribution to Family Trust 1 or Family Trust 2. Accordingly, based on the facts submitted and the representations made, the two trusts resulting from the division of Trust will be treated for GST tax purposes as Trust and will not be subject to the provisions of chapter 13.

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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. Specifically, we express no opinion regarding the tax consequences of Spouse's disclaimer.

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

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,  
Lorraine E. Gardner  
Acting Senior Technician Reviewer  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for 6110 purposes