

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04-PLR-122944-01
Date:

October 17, 2001

Re:

Legend:

Trust =
Trust Agreement =

Child Trust =
Decedent =
Spouse =
Child =
Date 1 =
Date 2 =
State Statute =

Dear :

This is in response to the March 12, 2001 letter and other correspondence requesting a ruling concerning the generation-skipping transfer tax consequences of the proposed division of a trust.

You have requested the following ruling:

The proposed division of Child Trust will not cause Child Trust to lose its exempt status for generation-skipping transfer tax purposes under section 1433(b)(2)(A) of the Tax Reform Act of 1986 and section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, nor will the proposed division into partitioned trusts subject either Child Trust or the resulting partitioned trusts to the generation-skipping transfer tax.

The facts submitted are as follows:

On Date 1, Decedent established Trust under Trust Agreement. Decedent died on Date 2. Trust Agreement became irrevocable on Decedent's death.

Article 3 provides that, on the death of Decedent, if Spouse survives Decedent, the trustee shall set apart as a separate trust a fractional share of Trust for Spouse's benefit. Paragraph 3.5 of the Trust Agreement states that the balance of the remaining

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trust property is to be held in a separate trust for the benefit of Decedent's children in accordance with the provisions of Article 5.

Article 5 is comprised of Paragraphs 5.1 through 5.5. Paragraph 5.1 divides the trust property held for Decedent's children into equal separate trusts, named for each of Decedent's children.

Paragraph 5.2 provides that the net income of a trust named for Decedent's child shall be distributed to such child or the issue of such child in such amounts as the trustee shall from time to time determine to be suitable and prudent.

Paragraph 5.3 provides that the trustee may distribute portions of the principal of a trust named for Decedent's child to such child or the issue of such child, as the trustee determines to be suitable to provide for the care, support, maintenance, comfort, and general welfare of such person.

Paragraph 5.4 provides that each child of Decedent shall have a limited power of appointment over the property held in the trust named for such child. If upon the death of a child of Decedent, there remains any undistributed property of the trust and such child has not effectively appointed such property, then the property shall be distributed to the issue of Decedent's child by right of representation, and if such child is not survived by issue, to the living brothers and sisters of such child in equal shares and to the then living issue of a deceased brother or sister by right of representation.

Paragraph 5.5 provides that the limited power of appointment granted to each child may be exercised only directly to, or in trust for the benefit of, issue of that child. The power shall be exercised by a written instrument or a will that expressly refers to the power of appointment. The holder of the power of appointment may appoint outright or in trust. Any interest appointed must vest within 21 years after the death of the survivor of Decedent, and all issue of Decedent who survive him.

Child is a child of Decedent. Child Trust was created under the terms of Article 3 and Article 5 of Trust Agreement after Decedent died on Date 2. Child Trust was irrevocable on September 25, 1985 and no additions were made to Child Trust after September 25, 1985. Child has three children.

The trustees of Child Trust propose to divide Child Trust into three equal trusts. The terms of each partitioned trust will be identical to Child Trust. The division of Child Trust is proposed in order to separate the interests of each of Child's three children and their respective families.

State Statute provides that a trustee may, without the approval of any court, divide a trust, before or after it is funded, into two or more separate trusts if the trustee determines that dividing the trust is in the best interests of all persons interested in the trust and will not substantially impair the accomplishment of the purposes of the trust.

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Child intends to execute a will containing a provision that will exercise her limited power of appointment to appoint the remaining assets of each of the three new trusts to each of her three children.

LAW AND ANALYSIS

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

Under section 1433(a) of the Tax Reform Act of 1986 (Act) and section 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax (GSTT) is generally applicable to generation-skipping transfers made after October 22, 1986. However, under section 1433(b)(2)(A) of the Act and section 26.2601-1(b)(1)(i), 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).

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 GSTT under section 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 section 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 generation-skipping transfer or the creation of a new generation-skipping transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GSTT is divided into two trusts. Under the facts presented, 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 section 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. Accordingly, the two partitioned trusts will not be subject to the provisions of chapter 13.

For purposes of the present case, it is represented that no additions (actual or constructive) were made to Child Trust after September 25, 1985.

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In this case, the proposed partition of Child Trust by the trustees will not result in a shift of any beneficial interest in Child Trust or the partitioned trusts to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed partitions will not extend the time for vesting of any beneficial interest in the new trusts beyond the period provided for in Child Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed partition of Child Trust into three separate trusts, will not cause Child Trust or the partitioned trusts to lose exempt status for GSTT purposes.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each taxpayer.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 an 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.

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

Sincerely yours,
Lorraine E. Gardner
Acting Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)