

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-134511-01
Date:
April 22, 2002

Re:

Legend:

Decedent =

Trust =

Testamentary Trust =

Corporation =

Family =

Local Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

x =

y =

\$a =

\$b =

Dear :

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This is in response to your letter dated June 11, 2001 in which you requested rulings under § 2601 of the Internal Revenue Code.

The facts submitted and representations made are as follows: Decedent created an irrevocable inter vivos trust (Trust) on Date 1. The assets of Trust consist of cash and marketable securities having a value of approximately \$a, plus x shares of Corporation.

On Date 4, Decedent died. Decedent's will created a trust, Testamentary Trust, that currently holds, among other assets, a small amount of shares of stock in Corporation (y shares).

Paragraph 3 of Testamentary Trust provides that during the continuation of Testamentary Trust, the net income from the trust or the part the trustees determine to be available for distribution shall be paid not less than quarter-annually in equal shares to Decedent's four children. If any child shall die prior to the termination of this trust leaving issue living, then the share of income that child would have taken shall go to such issue, per stirpes.

Paragraph 4 provides that Testamentary Trust shall terminate on the death of the survivor of Decedent's four children, and the entire trust estate shall be distributed in equal shares to Decedent's then living grandchildren, per capita, provided that if any grandchild of Decedent shall predecease the termination of the trust with issue living, the issue shall take, per stirpes, the share which the grandchild would have taken had he or she survived the termination of the trust.

Paragraph 7 provides that trustees may sell, exchange, and grant options to purchase or exchange any part of the trust estate.

In order to consolidate all of the Corporation shares owned by the Family trusts into one trust, trustees filed a Petition for Approval of Sale of Corporation Shares with Local Court, requesting that Local Court approve the sale of the shares of Corporation shares held by Testamentary Trust to Trust. Trustees represent that the y shares of stock of Corporation held by Testamentary Trust are worth a total of \$b.

On Date 3, Local Court approved all of the relief requested in the Petition for Approval of Sale of Corporation Shares. This order is conditioned on a favorable ruling from the Internal Revenue Service that the sale will not cause Testamentary Trust to lose its exempt status for generation-skipping transfer (GST) tax purposes.

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

Under Section 1433(a) of the Tax Reform Act of 1986, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986.

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Section 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the generation-skipping transfer (GST) tax shall not apply to any generation-skipping transfer from 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 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.

Section 26.2601-1(b)(4)(i)(D)(1) provides that 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.

In this case, trustees of Testamentary Trust intend to sell the shares of stock that Testamentary Trust holds in Corporation to Trust, and Local Court has approved the sale. The sale of the Corporation stock will not shift a beneficial interest in Trust or Testamentary 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. In addition, the sale will not extend the time for vesting of any beneficial interest in the trusts. Therefore, we conclude that the proposed sale of Corporation stock by Testamentary Trust to Trust will not cause either trust to lose their exempt status with respect to the GST tax.

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(s) requesting it. Section 6110(k)(3) of

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the Code provides that it may not be used or cited as precedent.

Sincerely,
James F. Hogan
Senior Technician Reviewer
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes