

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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CC:PSI:04

PLR-141524-05

Date: JANUARY 25, 2006

Legend

Decedent =
Spouse =
Trust A =

Trust B =

Son =
Daughter-in-law =
Granddaughter =
Grandson =
Great-Grandson =
Date 1 =
Date 2 =
Year 1 =
Year 2 =
Year 3 =
Bank =
Trust Company =

Location =
State Court =

Dear :

This is in response to your letter dated July 20, 2005, concerning the proposed modification to Trust A and Trust B.

The facts and representations submitted are summarized as follows: Decedent died testate on Date 1, prior to September 25, 1985. Under the terms of Paragraph FIFTH of Decedent's will, a trust, Trust A, was established for the benefit of Spouse, pursuant to which, net income was to be paid to Spouse for her lifetime. On Spouse's death, the remaining corpus and any accumulated income were to be distributed pursuant to Spouse's exercise of a power of appointment to such persons as she may have designated in writing. In default of appointment, the corpus and any accumulated income were to be held in trust for the same persons and in the same manner as provided in Paragraph SIXTH of Decedent's will. Spouse died testate in Year 1, prior to September 26, 1985. Spouse did not exercise her power to appoint the corpus and any accumulated income of Trust A.

Paragraph SIXTH (d) provides that the rest, residue and remainder of Decedent's estate was to be held in further trust, Trust B. The trustee is directed to pay net income to Spouse for her life; then to Son for his life; then to Daughter-in-law for her life. Upon the death of the survivor of Son and Daughter-in-law, net income is to be paid to Granddaughter and Grandson, and all other of the children of Son, in equal proportions, for the term of their natural lives. Upon the death of a grandchild, his or her share shall be paid to his or her issue until the termination of Trust B.

Paragraph SIXTH (d)(6) provides that Trust B shall terminate upon the later to occur of: (1) the deaths of all of the children of Son or (2) when all of the grandchildren of Son shall have attained the age of twenty-one. Upon termination, trustee shall distribute the principal of Trust B to Decedent's great-grandchildren, per capita. The issue of any then deceased great-grandchildren shall take the share their parent would have been entitled to if living, per stirpes.

Paragraph TENTH provides that in the event of a complete failure of issue, Decedent's estate will continue to be held in Trust with the income being used for charitable purposes in and about Location.

Son died in Year 2 and Daughter-in-law died in Year 3. Accordingly, the current income beneficiaries of Trust A and Trust B are Granddaughter and Grandson. The only contingent income beneficiary is Great-Grandson. There is no provision allowing for principal invasion for either Trust A or Trust B. During the balance of time that Trust A and Trust B are in existence for the Decedent's descendants, the trustee is not vested with any power to make discretionary distributions of income or principal to the trust beneficiaries. The trustee is not authorized to prematurely terminate Trust A or Trust B or accelerate any beneficial interest in the trust property.

Son acted as trustee of both Trust A and Trust B from Date 1 until his resignation on Date 2, whereupon Bank, as successor to Trust Company, and pursuant to Paragraph TWELTH of Decedent's will, became successor trustee and is still the currently acting trustee of both Trusts. The will is silent as to the appointment of any successor or additional co-trustee.

Decedent's descendants, Granddaughter, Grandson, and Great-Grandson, propose to petition State Court, which is the court having jurisdiction over the administration of Trust A and Trust B, to appoint Grandson as an additional trustee of Trust A and Trust B for investment purposes. Under the terms of the proposed petition and order, Grandson will serve with Bank as co-trustee of both Trust A and Trust B, with co-equal rights, power, duties, and responsibilities granted to the original trustee as they pertain to investment decisions and purposes. Grandson, in his capacity as a co-trustee of each separate Trust, will be empowered to appoint a successor Trustee on either a temporary or permanent basis and in default of appointment of a successor, the Decedent's sole great-grandchild shall serve as co-trustee. The additional trustee shall serve without compensation.

You have requested a ruling that the proposed modification allowing for the appointment of an additional trustee of each of Trust A and Trust B created by the will of Decedent will not subject Trust A and Trust B to the Generation-Skipping Transfer (GST) tax provisions of the Code, and under section 2601 and section 26.2601-1(b)(4)(D) of the Generation-Skipping Transfer Tax Regulations, Trust A and Trust B will remain exempt from GST tax.

Section 2601 imposes a tax on every generation-skipping transfer made by a "transferor" to a "skip person". In general, under section 2652(a)(1) and section 26.2652-1(a)(1), the transferor for GST tax purposes is the last person with respect to whom the property was subject to the estate or gift tax.

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. However, under section 1433(b)(2)(A) of the Tax Reform Act and section 26.2601-1(b)(1)(i) of the regulations, the tax does not apply to a transfer from a trust, if the trust was irrevocable

on September 25, 1985. The rule does not apply to the extent additions (actual or constructive) were made to the trust after that date.

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 GST tax under section 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in section 26.2601-1(b)(4) are, except as otherwise noted, applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not generally apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of section 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy section 26.2601-1(b)(4)(i)(A), (B), or (C)) 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, 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.

Section 26.2601-1(b)(4)(i)(D)(2) provides that for purposes of section 26.2601-1(b)(4)(i)(D)(1), 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. To determine whether a modification of an irrevocable trust will shift 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. If the effect of the modification cannot be immediately determined, it is deemed to shift a 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 modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 10, involves a situation where in 1980, Grantor executed an irrevocable trust for the benefit of Grantor's issue, naming a bank and five other individuals as trustees. In 2002, the appropriate local court approved a modification of the trust that decreased the number of trustees and resulted in lower

administrative costs. The modification pertained to the administration of the trust and did not shift a beneficial interest in the trust to any beneficiary who occupied a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification did not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the modification did not subject the trust to the provisions of chapter 13 of the Internal Revenue Code.

In this case, Trust A and Trust B were irrevocable on September 25, 1985. It is represented that no additions have been made to either Trust A or Trust B after that date. The current income beneficiaries and the contingent income beneficiary propose to petition State Court to appoint Grandson as an additional Trustee of each separate Trust for investment decisions and purposes. Grandson will serve with Bank as co-trustee of both Trust A and Trust B, with co-equal rights, power, duties, and responsibilities granted to the original trustee as they pertain to investment decisions and purposes. Grandson, in his capacity as a co-trustee of each separate Trust, will be empowered to appoint a successor Trustee on either a temporary or permanent basis and in default of appointment of a successor, the Decedent's sole great-grandchild shall serve as co-trustee. Grandson, as co-trustee, will have no power to make discretionary distributions of income or principal to the trust beneficiaries, as is consistent with Decedent's will.

Based upon the information submitted and the representations made, the proposed modification of Trust A and Trust B is administrative in nature and does not shift a beneficial interest in Trust A or Trust B to a person or persons who occupy a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the modification. Further, the modification will not extend the time for vesting of any beneficial interest in Trust A or Trust B beyond the period provided for prior to the modification. Therefore, the modification will not cause Trust A or Trust B to lose its exempt status for GST tax purposes, and Trust A and Trust B will remain exempt from GST tax.

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. This 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.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Katherine A. Mellody
Senior Technical Adviser, Branch 4
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter