

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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RE:

LEGEND

Grandfather =
Grandmother =
Child 1 =
Child 2 =
Child 3 =
Grandchild =
State =

This is in response to a September 8, 1998 letter, and prior correspondence, from your authorized representative requesting rulings on the generation-skipping transfer tax consequences with respect to a proposed transaction. Grandfather and Grandmother are the parents of Child 1, Child 2, and Child 3. Child 3 died in 1992 and was survived by her minor son, Grandchild. After the death of Child 3, Grandchild was legally adopted under State law by Child 1 and her spouse. Under § 36-1-121(a) of the State Code, the effect of a final order of adoption is that the relationship of parent and child is established between the adoptive parents and the adopted child as if the adopted child had been born to the adoptive parents. The adopted child is deemed the lawful child of the adoptive parents and is treated as if the child had been born to the parents for all legal consequences and incidents of the biological relation of parents and child.

Section 36-1-121(e) provides that an adopted child shall not inherit real or personal property from biological parent or relative when the relationship between the biological parent and child has been terminated by an order of final adoption. However, if a parent of a child dies without the relationship of parent and child having been terminated and any other person thereafter adopts the child, the child's right of inheritance from or through the deceased biological parent or any relative shall be unaffected by the subsequent adoption.

Grandfather has executed a will that provides for a contingent outright bequest of personal and household effects to Grandchild and for a testamentary transfer in trust for the benefit of Grandchild. Grandmother has executed a will that provides for a contingent outright bequest to Grandchild and a testamentary transfer in trust of a portion of the residue of her estate for the benefit of Grandchild.

Grandfather and Grandmother have requested the following rulings:

1. Neither the adoption of Grandchild by Child 1 and her spouse nor § 36-1-121 of the State Code alters Grandchild's relationship to Grandfather and Grandmother for purposes of § 2651(e) of the Internal Revenue Code.
2. Grandchild is not a skip person as set forth in § 2613.
3. The proposed testamentary transfers will not be direct skips that will be subject to the generation-skipping transfer tax under § 2601.

Law and Analysis

Section 2601 imposes a tax on each generation-skipping transfer. Section 2611(a) defines a generation-skipping transfer to mean (1) a taxable distribution, (2) a taxable termination, or (3) a direct skip.

Section 2612(c)(1) provides that the term "direct skip" means a transfer subject to tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that the term "skip person" means:

- (1) a natural person assigned to a generation that is 2 or more generations below the generation assignment of the transferor, or
- (2) a trust –
 - (A) if all interests in the trust are held by skip persons, or

(B) if – (i) there is no person holding an interest in the trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

Section 2651(e)(1) provides that for purposes of determining whether any transfer is a generation-skipping transfer, if –

(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest of such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

In this case, Child 3 who was the natural parent of Grandchild died in 1992 and was survived by her minor son, Grandchild. After her death, Grandchild was legally adopted by Child 1 and her spouse. Grandfather and Grandmother have executed wills, the terms of which provide for certain transfers of property to or for the benefit of Grandchild. The transfers will take place after Child 3 has died. Under § 2651(e)(1), Grandchild is treated as if he were a member of the generation that is one generation below the generation of Grandfather and Grandmother.

Accordingly, we rule as follows:

1. Neither the adoption of Grandchild by Child 1 and her spouse nor the provisions of § 36-1-121 of the State Code alters Grandchild's relationship to Grandfather and Grandmother for purposes of § 2651(e) of the Internal Revenue Code.

2. Grandchild is not a skip person with respect to Grandfather and Grandmother as set forth in § 2613.

3. The proposed testamentary transfers, either outright or in trust, will not be direct skips that will be subject to the generation-skipping transfer tax under § 2601.

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(s) requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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 yours,

George Masnik
Chief, Branch 4
Office of the Assistant Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes