

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-131753-02
Date:
October 28, 2002

LEGEND:

Decedent	=
Will	=
Trust	=
Spouse	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year 7	=
Trustee 1	=
Trustee 2	=
Corporate Trustee	=
Son	=
Daughter	=

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Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Grandchild 4	=
Grandchild 5	=
Grandchild 6	=
Daughter's Husband	=
$\$x$	=
$\$y$	=
$\$z$	=

Dear :

This is in response to your letter dated May 28, 2002, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of a proposed modification of a trust.

The facts submitted and representations made are as follows. Decedent executed his Will on Date 1, and executed codicils to the Will on Date 2, Date 3, Date 4, and Date 5.

Article Eighth of the Will created Trust and provided that the trust shall receive the residue of Decedent's estate. The current co-trustees of the Trust are Trustee 1, Trustee 2, and Corporate Trustee.

Article Eighth, Section Seven provides that the beneficiaries of Trust shall have no right to sell, transfer, assign, mortgage, or in any other manner alienate, or encumber all or any part of their respective beneficial interest in Trust.

Article Eighth, Section Nine provides that, should Spouse be in need of money for her proper maintenance and support or to meet any emergency (or emergencies of Decedent's children), then the trustees, in their discretion, may pay to or for the benefit of Spouse such sums as may be necessary or desirable from the trust principal or income.

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Article Eighth, Section Ten provides that, upon the death of Spouse, the trustees shall distribute \$x each to Son, Daughter, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Grandchild 5, and Grandchild 6. If any of them shall be under the age of thirty-five years, as to such persons the trustees shall distribute the sum to them when they obtain the age of thirty-five years. The distribution to any of the named persons shall lapse and the amount remain a part of the corpus of Trust as to any of them that die prior to reaching the age of thirty-five years.

Article Eighth, Section Eleven provides that, upon the death of Spouse, after the distribution of corpus provided in Section Ten, the trustees shall distribute the income from the balance of the trust as follows: one-half to Son, one-half to Daughter, until they reach the age of sixty-five years. When Son reaches sixty-five years, he shall receive one-fourth of the income, and one-eighth shall go to Grandchild 5, and one-eighth to Grandchild 6. If either Grandchild 5 or Grandchild 6 shall die, then the income shall go to the survivor. When Daughter shall reach the age of sixty-five years, she shall receive one-fourth of the income and one-sixteenth shall go to each of the following: Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4. If any of the last four named beneficiaries shall die, the income shall be divided equally among the survivors of them.

Article Eighth, Section Twelve, Subsection A provides that, upon the death of Son, one-half of corpus shall be distributed in equal shares to Grandchild 5 and Grandchild 6, each to receive his or her share on reaching the age of thirty-five years. If either of them shall die prior to reaching the age of thirty-five years, or prior to the time either would be entitled to distribution, the sum shall go to the survivor of them.

Article Eighth, Section Twelve, Subsection B provides that, upon the death of Daughter, one-half of the corpus shall be distributed in equal shares to Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4, each to receive his or her share on reaching the age of thirty-five years. If any of them shall die prior to reaching the age of thirty-five years or prior to the time either would be entitled to distribution, the sum shall go to the survivor or survivors of them. However, Daughter's share is subject to Article Eighth, Section 13, which provides for Daughter's Husband. Specifically, Section Thirteen provides that, if Daughter should die and Daughter's Husband shall survive her, trustees shall pay Daughter's Husband \$y per year for a period of five years.

Article Eighth, Section Twelve, Subsection C provides that, should either of Decedent's children die prior to the death of Spouse, then the share of the deceased child shall be distributed upon Spouse's death to his or her living children on reaching the age of thirty-five years, and the income prior to their distribution of corpus shall be distributed to the grandchildren in the same ratio as they would receive the corpus.

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Article Eighth, Section Fourteen provides that, if at any time the trustees in their discretion determine that any member or members of Decedent's family is in need of financial assistance because of illness, accident, calamity, or other hardship, then the trustees may pay over to or for the benefit of the person or persons the amount of money the trustees believe necessary and advisable to alleviate the condition. The payment may be made either from corpus, with or without a deduction from the share that might otherwise go to the recipient, or as an advance upon the recipient's share of the net income, or otherwise, as the trustees shall decide.

Article Eighth, Section Sixteen provides that, unless sooner terminated in accordance with other provisions, each trust created under the Will shall terminate twenty-one years after the death of the last survivor of Spouse and Decedent's issue living at the time of Decedent's death.

Article Eighth, Section Seventeen provides that Trust shall terminate upon the death of the last to die of Son and Daughter or, in the event of their death prior to their children attaining the age of thirty-five years, the last of Decedent's grandchildren to reach the age of thirty-five, whichever event occurs first. As each beneficiary reaches the age of thirty-five, his or her share, in this instance, shall be severed from the remaining Trust and distributed accordingly.

The codicil to the Will dated Date 4 provides that upon Decedent's death, Grandchild 3 is to be given the sum of \$z. His interest in Trust or any other monies as listed in the Will are to be spread between the remaining three children of Daughter.

The codicil to the Will dated Date 5 provides that Grandchild 6 will receive one-half of her share as listed in the Will. The remaining one-half of Grandchild 6's share will go to her daughter.

Trust was irrevocable as of the date of Decedent's death on Date 6, a date prior to September 25, 1985. It has been represented that no additions, actual or constructive, have been made to Trust. Spouse died in Year 7.

The trustees intend to have the Trust modified to provide that the Trust may be held, administered, and distributed so that the trustees will pay to the current income beneficiaries the greater of the following: (1) all of the net income of the trust; or (2) a unitrust amount ranging between three percent and five percent per annum, which percentage amount the trustees may establish, in their discretion, and change within that range on a year-by-year basis.

The trustees have requested a ruling that the Trust will not lose its grandfathered status as a trust that is exempt from the GST tax.

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

Under § 1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer from a trust if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. 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. In this case, Trust is considered to be irrevocable on September 25, 1985, because neither § 2038 nor § 2042 apply.

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 generation-skipping transfer tax will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not 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 § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification 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 § 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 transfer or the creation of a new GST transfer.

Trustees are currently required to distribute the income from Trust to the income beneficiaries named in Article Eighth, Section Eleven of the Will. After the proposed modification of Trust, the trustees will pay to the income beneficiaries the greater of the following: (1) all of the net income of the trust; or (2) a unitrust amount ranging between three percent and five percent per annum. The trustees will have the discretionary authority to change, on a yearly basis, the unitrust amount within the three percent to five percent range. In this case, the proposed modification of Trust will not result in a shift of any beneficial interest in the Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the modification.

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Further, the modification of Trust will not extend the time for vesting of any beneficial interest in the Trust beyond the period provided for in the original trust. Accordingly, based on the facts submitted and the representations made, we rule that the proposed modification to the Trust will not subject the Trust to the generation-skipping transfer tax.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the modification under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion on the federal income and gift tax consequences of the modification.

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,

James F. Hogan

James F. Hogan
Senior Technician Reviewer, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

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