

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-124767-13

Date:
December 17, 2013

In Re:

LEGEND:

- Testator =
- Spouse =
- Daughter =
- Son =
- Grandchild A =
- Grandchild B =
- Grandchild C =
- Grandchild D =
- Great-Grandchild C =
- Great-Grandchild D =
- Trust =
- Corporate Trustee =

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- State Statute =
- Probate Court =

- State =

Dear :

This letter responds to your authorized representative's letter of November 14, 2013,

and other correspondence, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of a proposed modification of Trust.

The facts submitted and representations made are as follows. Testator died on Date 1, which is a date prior to September 25, 1985, at which time an irrevocable trust (Trust) was created under Article V of his will.

Article V, Paragraph (2), of Trust provides that trust income is distributable per stirpes to Testator's lineal descendants living at the time of distribution. Under Article V, Paragraph (4), Trust is to terminate on the death of the last to survive of Spouse, Daughter, and Son.

Spouse died on Date 2. Daughter died on Date 3. Son is still living. Daughter is survived by two children, Grandchild A and Grandchild B, who have no issue. Son has two children, Grandchild C (who has one child, Great-Grandchild C) and Grandchild D (who has one child, Great-Grandchild D). Grandchild D was living at Testator's death. Corporate Trustee is currently serving as the trustee.

Absent modification of Article V, Trust will terminate at Son's death, and the trust property will be distributed outright per stirpes to such of Grandchild A, Grandchild B, Grandchild C (or, if he has died, Great-Grandchild C), and Grandchild D (or, if she has died, Great-Grandchild D) who are then living.

Proposed modification

Pursuant to State Statute, Son filed a Petition with the Probate Court of State seeking to modify Article V of Trust. On Date 4, the Probate Court approved the modification contingent on obtaining a private letter ruling from the Internal Revenue Service finding that the modification would not result in Trust's loss of "grandfathered" status for GST tax purposes.

The proposed modification is as follows. Article V, Paragraph (4) will provide that, on the termination of Trust (i.e., at Son's death), the remaining Trust property will be divided among testator's then living lineal descendants, per stirpes. Each share for a Grandchild will be held in a separate trust, and each share for a Great-Grandchild will be distributed outright to the respective Great-Grandchild.

Further, Article V, Paragraph (5)(a), will provide that the trustee may distribute to or for a respective Grandchild all or any part of the income and principal of that Grandchild's separate trust, in such amounts and at such times as the trustee determines to be necessary or appropriate for the Grandchild's health, education, maintenance and support. The trustee may also distribute to or for the Grandchild's benefit any additional amounts of income and principal as the trustee determines to be necessary or appropriate for any other purpose.

Article V, Paragraph (5)(c), will provide that a Grandchild's trust will terminate on the first to occur of: (i) the Grandchild's death; or (ii) the 21st anniversary of the death of the last survivor of Testator's lineal descendants living at Testator's death (i.e. Grandchild D). If a Grandchild's separate trust terminates on the occurrence of the Grandchild's death, the property of his or her separate trust will be distributed pursuant to the Grandchild's exercise of a general testamentary power of appointment. If the Grandchild fails to exercise the testamentary power of appointment, the property of his or her separate trust will be distributed to his or her estate. However, if a Grandchild's separate trust terminates on the 21st anniversary of Grandchild D's death, the property of the Grandchild's separate trust will thereupon be distributed outright to him or her.

You have asked us to rule that the separate Grandchildren's trusts created pursuant to the modification of Trust, as described above, qualify under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer (GST) Tax Regulations as exempt from GST tax as trusts that were irrevocable on September 25, 1985.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provides that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was 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)(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 § 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 § 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.

In the present case, under the modification to Trust, the Trust property will be divided on Son's death among Testator's then living descendants, as described above. A Grandchild's share that he or she would have otherwise received outright will continue in a separate trust for his or her benefit. He or she will have a testamentary general power of appointment under § 2041(a)(2) with respect to the property of such separate trust. If a Grandchild's trust terminates before that Grandchild's death, i.e., upon the 21st anniversary of Grandchild D's death, the Grandchild will receive outright the

property of his or her separate trust. Accordingly, each Grandchild will be treated as the transferor of the property of his or her separate trust for GST tax purposes under § 2652(a)(1).

Under these circumstances, we conclude that the modification of Trust pursuant to the Probate Court order will not shift a beneficial interest in Trust to any beneficiary occupying a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification will not extend the time for vesting of any beneficial interest in Trust beyond the period provided in the original Trust. Therefore, under the facts submitted and the representations made, the modification of Trust will not be treated as an actual or constructive addition for purposes of the effective date rules under § 26.2601-1(b)(1)(i) and will not cause Trust to lose its exempt status under § 2601. The Grandchildren's separate trusts to be funded on Son's death, for their benefit, are treated as trusts which were irrevocable on September 25, 1985, for purposes of § 1433(b)(2)(A) of the Act and which are exempt from the generation-skipping transfer tax.

Except as expressly provided 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 requesting it. Section 6110(k)(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.

The ruling contained in this letter is 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.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures:
copy for § 6110 purposes