Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No

Telephone Number:

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CC:PSI:B04
PLR-104272-15

Date: JUNE 24, 2015

In Re:

Legend

Grantor	=
Trust	=
Son	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Grandchild 4	=
Date 1	=
Date 2	=
Date 3	=
X	=
Trustee	=
Foundation	=
Court	=
State Statute	=

Dear :

This letter responds to your authorized representative's letter dated January 23, 2015, and subsequent correspondence, requesting rulings on the gift and generation-skipping transfer (GST) tax consequences of the proposed modifications of a trust.

Facts

The facts submitted and representations made are as follows. Under Article IV of Grantor's Will, executed on Date 1, Grantor created a testamentary trust (Trust) for the primary benefit of Son and his descendants. Grantor died on Date1, a date prior to September 25, 1985, survived by Son. Son has 4 living children, Grandchild 1, Grandchild 2, Grandchild 3 and Grandchild 4. A bank is the trustee (Trustee) of Trust.

Article VI, section 4.2 of Trust provides, that upon Grantor's death, Trustee will divide Trust property into equal shares, one share for each child of Grantor and one share for the living descendants (collectively) of each deceased child of Grantor. Each share set aside for the descendants of a deceased child will be divided into portions for such descendants *per stirpes*. Each such share set aside for a living child and each portion set aside for a descendant of a deceased child will constitute a separate trust, and the records of Trustee shall be kept accordingly. Each such trust shall be known by the name of my child or their descendant for whom it was set aside and who shall be the primary beneficiary of such trust (referred to as the "Beneficiary" of his or her trust).

Article VI, section 4.3 of Trust provides, that Trustee will distribute so much of the income and principal of each trust to the beneficiary of the trust and/or their descendants as the trustee determines in the trustee's absolute discretion. Trustee has full discretion to distribute more or less or none or all of a child's trust to such child. In determining what distributions are to be made from each trust, Trustee may consider possible income tax savings as well as other considerations. In addition to the distributions provided for under this section Trustee may, in the Trustee's sole discretion distribute to Foundation any income of the trusts created under Article IV which is not distributed to a Beneficiary or the descendants of a Beneficiary, and it is Grantor's desire that Trustee make such distributions of the excess income each year so long as the security of my descendants is not impaired.

Article VI, section 4.4 of Trust provides that at Son's death, all Trust income and principal remaining in Trust is to be divided equally among Son's then-living descendants *per stirpes*, and held in a separate trust for the benefit of each such descendant until the termination of Trust.

Article VII, section 7.4 of Trust provides that Trust is to terminate not later than one day prior to the date twenty-one years after the date of death of the last to survive of Grantor's father's descendants who were living at the date of the creation of Trust. Upon termination all undistributed income and principal of Trust is to be distributed to Foundation. Grandchildren were living at Grantor's death.

Son is currently X years old. All Grandchildren are adults. Trustee began serving as trustee on Date 3. Trustee has made distributions from Trust in each year in

which it has served as Trustee. In recent years, Grandchildren have had differing investment goals and personal financial needs. As a result, the level of distributions to Grandchildren has been significantly disproportionate and Trustee anticipates that this will continue in the future. Under Trust terms, at Son's death, the assets of Trust are to be divided equally and distributed to separate trusts, one for each Grandchild, *per stirpes*.

Trustee intends to file a petition in Court requesting that the court judicially modify Trust to divide Trust into four equal trusts (Resulting Trusts), one for the benefit of each Grandchild, *per stirpes.* Each Resulting Trust would continue to provide for Son. The division would be accomplished by a pro rata division of each Trust asset. The modification would also clarify that distributions to Son are to be borne equally by each Resulting Trust and that Trustee is not required to give preferential treatment as between Son and Son's descendants when making distributions.

Trustee would continue to act as the sole trustee of each Resulting Trust. The dispositive terms of the Resulting Trusts would be identical to the dispositive terms of Trust, except that the distributees of income and principal of each Resulting Trust would be limited to Son and Grandchild's family line for whom the Resulting Trust is established.

State Statute 1 provides, that, on the petition of a trustee or a beneficiary, a court may order that the terms of the trust be modified or that the trustee be directed to do acts that are not authorized under the terms of the trust, if: (1) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust; or (2) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or avoid impairment of the trust's administration.

You have requested the following rulings:

1. That the proposed modifications to Trust will not cause Trust to lose its grandfathered status as exempt from GST tax under chapter 13 of the Internal Revenue Code.

2. That the proposed division of Trust and pro rata allocation of each Trust asset among the Resulting Trusts will not constitute a transfer by any Trust beneficiary that will be subject to federal gift tax.

Ruling 1

Section 2601 imposes a tax on each generation skipping transfer. Under section 1433(b)(2)(A) of the Tax Reform Act of 1986 Act and § 26.2601-1(b)(1)(I) of the Generation-Skipping Transfer Tax Regulations, 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 the transfer is 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)(1)(ii)(A) of the Generation-Skipping Transfer Tax Regulations provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in § 26.2601-1(b)(1)(ii)(B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

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 of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraph (b)(4)(i)(A), (B), or (C) of this section) 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, but only if B

> (1) 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
>
> (2) 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.

Trust was irrevocable prior to September 25, 1985, and it is represented that there have been no additions (constructive or otherwise) to Trust after that date. Accordingly, Trust is exempt from the generation-skipping transfer tax.

Based on the facts presented and representations made, we conclude that provided the appropriate court issues an order approving the modifications of Trust, discussed above, the modifications will not shift any beneficial interest in Trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modifications and division. In addition, the modifications of Trust will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trust. Accordingly,

based on the facts submitted and the representations made, the modifications of Trust will not cause Trust or Resulting Trusts for the benefit of Son, Grandchild 1, Grandchild 2, Grandchild 3 and Grandchild 4 to be subject to the generation-skipping transfer tax imposed by chapter 13 of the Internal Revenue Code.

Ruling 2

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

In this case, the beneficiaries of the Resulting Trusts will have substantially the same interests after the proposed division of Trust that they had as beneficiaries under Trust. Because the beneficial interests, rights, and expectancies of the beneficiaries are substantially the same, both before and after the proposed division of Trust, no transfer of property will be deemed to occur as a result of the division. Accordingly, based on the facts submitted and the representations made, we conclude that the division of Trust, as described above, will not result in a transfer by any beneficiary of Trust, or the Resulting Trusts that will be subject to federal gift tax under § 2501.

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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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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.

Sincerely,

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Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for § 6110 purposes