

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PT&E:B04

PLR-114158-24

Date:

February 04, 2025

In Re:

Legend

Trust =

Trust A =

Settlor =

Spouse =

Daughter =

Son =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

State Statute 1 =

State Statute 2 =

State =

Court =

Dear _____ :

This letter responds to your authorized representative's letter dated July 31, 2024, requesting a ruling concerning the federal generation-skipping transfer (GST) consequences of the proposed modification of Trust A.

The facts and representations submitted are summarized as follows:

On Date 1, Settlor established Trust, a revocable inter vivos trust, that Settlor subsequently restated on Date 2 and amended on Date 3, all prior to October 22, 1986. Settlor died on Date 4, a date before January 1, 1987, at which time Trust became irrevocable. Settlor was survived by Spouse and his descendants, including Daughter and her descendants, and Son. It is represented that no additions have been made to Trust after Date 4. Spouse died on Date 5. Son died on Date 6. At the present time, Daughter is living.

After Settlor's death, certain trusts formed under Trust were maintained for Spouse's benefit during Spouse's life. After Spouse's death, the remainder of Trust passed to Trust A, a trust established under Article Three (B) of Trust for the benefit of Settlor's descendants.

Article Three (B) provides that upon the death of Settlor's children, the remainder of Trust A will be held in further trust for Settlor's grandchildren and more remote descendants, with each grandchild's share held as a separate trust. The share of any deceased grandchild will be distributed outright to such grandchild's descendants. The trustee of each grandchild's trust may distribute income and principal to such grandchild for their welfare, comfortable support, and education. Twenty-one years following the death of the survivor of all Settlor's descendants living at his death, each grandchild may withdraw all of the principal of such grandchild's trust. Upon the death of each grandchild, the remainder of such grandchild's trust will be distributed according to the grandchild's exercise of a limited power of appointment. If such grandchild does not exercise the limited power of appointment, the unappointed principal of such grandchild's trust will be distributed outright to the grandchild's descendants.

On Date 7, the living beneficiaries of Trust A executed a nonjudicial settlement agreement to modify the terms of Trust A, effective upon the issuance of a favorable private letter ruling. On Date 8, the trustees of Trust A petitioned Court to approve the nonjudicial settlement agreement, and, on Date 9, Court issued an order approving the nonjudicial settlement agreement.

The relevant provisions of Trust A, as modified by the Date 9 order, are summarized as follows:

Article Three (B), as modified, provides that upon the death of Settlor's children, the remainder of Trust A is held in further trust for Settlor's grandchildren and more remote descendants, with each grandchild's share held as a separate trust. The share

of any deceased grandchild is further divided into subshares to be held as a separate trust for each of such grandchild's descendants and administered under subparagraph (2-A). The trustee of each grandchild's trust may distribute income and principal to such grandchild for their welfare, comfortable support, and education. Twenty-one years following the death of the survivor of all Settlor's descendants living at his death, each grandchild may withdraw all of the principal of his respective trust. Upon the death of each grandchild, the remainder of such grandchild's trust will be distributed according to the grandchild's exercise of a limited power of appointment, but such power may not be exercised so as to extend the trust beyond the allowable perpetuities period as measured from the Settlor's death. If such grandchild does not exercise the limited power of appointment, the unappointed principal of such grandchild's trust is further divided into subshares to be held as a separate trust for each of such grandchild's descendants and administered under subparagraph (2-A).

Article Three (B), as modified, adds new subparagraph (2-A). Subparagraph (2-A) provides that the trustee of each trust held for a descendant of a grandchild of Settlor may distribute income and principal to such beneficiary for their welfare, comfortable support, and education. Twenty-one years following the death of the survivor of all Settlor's descendants living at his death, the beneficiary may withdraw all of the principal of such beneficiary's trust. Upon the death of each beneficiary, the remainder of such beneficiary's trust will be distributed according to the beneficiary's exercise of a general power of appointment, but such power may not be exercised so as to extend the trust beyond the allowable perpetuities period as measured from the Settlor's death. If such beneficiary does not exercise the general power of appointment, the unappointed principal of such beneficiary's trust is further divided into subshares to be held as a separate trust for each of such beneficiary's descendants and administered under subparagraph (2-A).

You have requested a ruling that the proposed modification of the terms of Trust A will not cause Trust A to lose GST-exempt status or otherwise become subject to the GST tax.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 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 § 1433(b)(2)(B) of the Tax Reform Act and § 26.2601-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to any transfer under a will or revocable trust executed before October 22, 1986, provided that the document in existence on October 21, 1986 is not amended after October 21, 1986, and no addition is made to the revocable trust after October 21, 1986, in any respect which results in the

creation of, or an increase in the amount of, a generation-skipping transfer, and the decedent dies before January 1, 1987.

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 § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST 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)(1) provides that a modification of the governing instrument of an exempt trust 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. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST or the creation of a new GST.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive.

Section 2652(a)(1) provides that the term transferor means, in the case of any property subject to the tax imposed by chapter 11, the decedent, and in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

State Statute 1 provides, in pertinent part, that all beneficiaries, all trustees and other persons, if any, who have an interest in a matter relating to a trust may enter into a binding nonjudicial settlement agreement with respect to the matter. Matters that may be resolved by nonjudicial settlement agreement include the modification or termination of a trust. Any beneficiary or trustee of a trust may request the court to approve a nonjudicial settlement agreement.

State Statute 2 provides, in pertinent part, that a noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the court concludes that the modification is not inconsistent with a material purpose of the trust.

In the present case, Trust was a revocable trust that was executed before October 22, 1986, and was not amended after October 21, 1986. Settlor died before January 1, 1987. You have represented that no additions, constructive or actual, have been made to Trust A after Date 4, the date that Trust A became irrevocable.

After the proposed modifications, Daughter and Daughter's descendants have the same interests they had before the proposed modifications, except that Trust A property that would have been distributed free from trust to a beneficiary may or will be retained in separate trust for the sole lifetime benefit of such beneficiary. With respect to each such trust, the beneficiary is granted a testamentary general power of appointment under § 2041(a)(2) over the trust, and each such trust must terminate and vest within the period prescribed by State's rule against perpetuities.

For transfer tax purposes, the grant of the testamentary general power of appointment will cause the beneficiary's trust to be includible in the gross estate of the beneficiary at his or her death under § 2041(a)(2), and the beneficiary will be the transferor of the trust for GST tax purposes under § 2652(a)(1). Therefore, with respect to these provisions, the proposed modifications to Trust A will not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust.

Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications of Trust A pursuant to the Date 9 order do not cause Trust A to lose GST-exempt status or otherwise become subject to the GST tax.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

A copy of this letter should be attached to any gift, estate, or GST tax returns that you may file relating to this matter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs, Trusts, and Estates

By:

Daniel J. Gespass
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure
Copy for § 6110 purposes

cc:

cc:

cc: