

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-114159-24

Date:

February 04, 2025

In Re:

Legend

Trust =

Husband =

Wife =

Daughter =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State Statute =

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.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Husband and Wife (Settlors) established an irrevocable trust, Trust, for the benefit of Settlor's daughter, Daughter, and Daughter's descendants.

Paragraphs 2 and 3 of Trust provide that the trustee may distribute income and principal to Daughter for her maintenance, support, care, and comfort.

Paragraph 4 of Trust provides that upon the death of Daughter, the remainder of Trust will be held in further trust for the benefit of Daughter's children and the descendants of any deceased child of Daughter. The trustee may distribute income and principal to such beneficiaries for their maintenance, support, and education.

Paragraph 5 of Trust provides that Trust shall terminate after Daughter's death, when Daughter's youngest child reaches the age of 21, and the remainder will be distributed outright in equal shares to Daughter's children with an equal share, per stirpes, being distributed outright to the descendants of any deceased child of Daughter.

On Date 2, Daughter and the living remainder and contingent beneficiaries of Trust executed a nonjudicial settlement agreement to modify the terms of Trust, effective upon the issuance of a favorable private letter ruling. On Date 3, the trustees of Trust petitioned Court to approve the nonjudicial settlement agreement, and on Date 4, Court issued an order approving the nonjudicial settlement agreement.

The relevant provisions of Trust, as modified by the Date 4 order, are summarized as follows:

Paragraph 5(a), as modified, provides that Trust shall terminate after Daughter's death, when Daughter's youngest child reaches the age of 21, and the remainder will be distributed outright in equal shares to Daughter's children with an equal share, per stirpes, passing into further trust for any descendant of a deceased child of Daughter.

Paragraph 5(b), as modified, provides that the trustee of a trust established for a descendant of a deceased child of Daughter may distribute income and principal to such descendant for their maintenance, support and education, and that each such trust will terminate upon the earlier death of such descendant or 21 years after the date of death of the last to die of Daughter and Daughter's lineal descendants living on the date of the execution of Trust. Upon the death of each such descendant, the remainder of such descendant's trust will be distributed according to the descendant's exercise of a general power of appointment. If such descendant does not exercise the general power of appointment, the unappointed principal passes into further trust for the benefit of such descendant's lineal descendants, to be governed according to the provisions of Paragraph 5(b).

Paragraph 5(c), as modified, provides that any trust established under Paragraph 5 will terminate 21 years after the date of death of the last to die of Daughter and Daughter's lineal descendants living on the date of the execution of Trust, with the remainder distributed outright to the then-beneficiary of such trust.

You have requested a ruling that the proposed modification of the terms of Trust will not cause Trust 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.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the GST tax shall not apply to any GST 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) 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 provides, in pertinent part, that interested persons, that is, persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court, may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust. Matters that may be resolved by a nonjudicial settlement agreement include the modification or termination of a trust. Any interested person may request the court to approve a nonjudicial settlement agreement.

In the present case, Trust was irrevocable on September 25, 1985, and you have represented that no additions, actual or constructive, have been made to Trust after that date within the meaning of § 26.2601-1(b)(1).

After the proposed modifications, Daughter and Daughter's descendants have the same interests they had before the proposed modifications, except that trust 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 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 pursuant to the Date 4 order do not cause Trust 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

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

Sincerely,

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

CC:

CC:

CC: