

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PT&E:B04

PLR-119971-24

Date:

April 11, 2025

In Re:

Legend

Husband =

Wife =

Husband's Trust =

Wife's Trust =

Family Trust =

Husband's Exempt Trust =

Wife's Exempt Trust =

Trustee =

State =

Date 1 =

Date 2 =

Date 3 =

X =

Dear :

This letter responds to your authorized representative's letter dated October 21, 2024, and subsequent correspondence, requesting a generation-skipping transfer (GST) tax ruling regarding the proposed merger of certain trusts.

The facts and representations are as follows:

On Date 1, Husband and Wife each established separate revocable trusts governed by State law. The provisions of the revocable trusts are identical except that Husband is the settlor of his trust and named Wife as trustee and beneficiary, and Wife is the settlor of her trust and named Husband as trustee and beneficiary.

Wife died on Date 2, survived by Husband. Upon Wife's death, Wife's Trust was distributed to Family Trust. Family Trust has GST potential. Wife's GST exemption available at her death exceeded the value of her gross estate. Wife's GST exemption was automatically allocated to Family Trust, causing its inclusion ratio to equal zero.

Husband died on Date 3. Upon Husband's death, $\frac{x}{100}$ percent of Husband's Trust was distributed to Husband's Exempt Trust. Husband's Exempt Trust has GST potential. Husband's GST exemption available at his death exceeded the value of his gross estate. Husband's GST exemption was automatically allocated to Husband's Exempt Trust, causing its inclusion ratio to equal zero.

Upon Husband's death, $\frac{x}{100}$ percent of Family Trust was distributed to Wife's Exempt Trust. For GST purposes, Wife is the transferor with respect to Family Trust, and Family Trust's inclusion ratio is zero. Wife is also the transferor with respect to Wife's Exempt Trust. Wife's Exempt Trust has an inclusion ratio of zero because all property transferred from Family Trust to Wife's Exempt Trust was already exempt from GST tax by reason of the automatic allocation of Wife's GST exemption to Family Trust at Wife's death.

Under the governing instruments, Article XII, Section G. authorizes the trustee to merge any trusts created by either Husband or Wife that have the same trustee and substantially similar dispositive provisions. The provisions of Husband's Exempt Trust and Wife's Exempt Trust are identical, and Trustee is the sole trustee of both Trusts.

Article XVI, Section F. provides that State's rule against perpetuities is waived for all property interests created thereunder to the maximum extent permitted under State law.

Trustee proposes merging Husband's Exempt Trust into Wife's Exempt Trust. After Husband's Exempt Trust is merged into Wife's Exempt Trust, Husband's Exempt Trust will terminate, and the provisions of Wife's Exempt Trust will apply to all property held thereunder. It is represented that the reason for the merger is to save administrative costs and enhance the management of the trusts' investments.

You have requested the following ruling:

The proposed merger of Husband's Exempt Trust into Wife's Exempt Trust will not affect the present GST tax exempt status of such trusts and will not cause any distributions (upon termination or otherwise) from Wife's Exempt Trust to its beneficiaries to become subject to the GST tax.

LAW AND ANALYSIS

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

Under § 2602, the amount of GST tax is the taxable amount multiplied by the applicable rate. Under § 2641, the applicable rate means the product of the maximum federal estate tax rate, and the inclusion ratio (defined under § 2642) with respect to the transfer.

Under § 2631(a), for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Under § 2632(a)(1), any allocation by an individual of his GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Under § 2632(e), any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated first to property which is the subject of a direct skip occurring at such individual's death, and second to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Under § 2652(a), the term "transferor" means, in the case of any property subject to estate tax, the decedent, and in the case of any property subject to gift tax, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Under § 1433 of the Tax Reform Act of 1986 (Act), the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, provided no additions (actual or constructive) were made to the trust after that date.

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 GST tax under § 26.2601-1(b) 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 GST tax purposes.

In this case, sufficient GST exemption was allocated to Husband's Exempt Trust and Wife's Exempt Trust to cause their respective inclusion ratios to equal zero. No guidance has been issued concerning the modification of a trust that may affect the status of a trust that is exempt from GST tax because sufficient GST exemption was allocated to the trust. At a minimum, a modification that would not affect the GST status of a trust that is exempt from GST tax under § 26.2601-1(b) will similarly not affect the exempt status of such a trust.

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, 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.

Example 6 of § 26.2601-1(b)(4)(ii)(E), considers a situation where the grantor, in 1980, establishes an irrevocable trust for grantor's child and the child's issue. In 1983, grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the 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 merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Therefore, the example concludes that the trust that resulted from the merger will not be subject to the provisions of chapter 13.

Husband's Exempt Trust and Wife's Exempt Trust have the same beneficiaries, and the Trusts' dispositive, administrative, and termination provisions are identical. State's rule against perpetuities does not apply to the Trusts. As a result, the Trusts may remain in existence indefinitely. Pursuant to the merger, the property held in Husband's Exempt Trust will be added to Wife's Exempt Trust, and Husband's Exempt Trust will terminate. Thereafter, all property will be subject to the terms of Wife's Exempt Trust. After the merger, all property will be subject to the same terms to which it was subject before the merger. Accordingly, the merger does not shift a beneficial interest in the trusts 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 trusts beyond the period provided for in the original trusts.

Accordingly, based on the information submitted and the representations made, we conclude that the proposed merger of Husband's Exempt Trust into Wife's Exempt Trust will not affect the present GST tax exempt status of such trusts and will not cause any distributions (upon termination or otherwise) from Wife's Exempt Trust to its beneficiaries to 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 representative.

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 including the gift tax consequences.

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.

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

/ s /

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:

Copy for § 6110 purposes

cc:

cc: