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**Department of the Treasury**

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CC:DOM:P&SI:4 - PLR-119982-98

**Date:** March 5, 1999

Re:

**LEGEND:**

Bank 1 =  
Bank 2 =  
Trust =

C =  
Decedent =  
Spouse =  
State 1 =  
State 2 =  
Year 1 =  
Year 2 =  
Year 3 =

This is in response to your authorized representative's letter dated October 9, 1998, in which a ruling was requested on the qualification of Trust as exempt from the Generation-Skipping Transfer Tax after the Individual Trustee's exercise of a power to replace the Corporate Trustee.

According to the facts submitted, Decedent died testate in Year 1. Under the terms of Section 7.1 of Decedent's will, a trust was established for the benefit of Decedent's Spouse.

Spouse died in Year 2. The trust was then divided, pursuant to the terms of Article 7.2 of Decedent's will, into three separate trusts: one each for the benefit of Decedent's two daughters and one for the benefit of the children of Decedent's deceased son. C is the Primary Beneficiary, and C and her issue are the Income Beneficiaries of the Trust which is the subject of this ruling request. C is the Individual Trustee and Bank 1 is the Corporate Trustee of Trust.

The Trustees of Trust may distribute all or any part of the income to the Primary Beneficiary or her issue, in such amounts as the Corporate Trustee, in its sole discretion, shall determine, or in the sole discretion of the Corporate Trustee, the Trustees may accumulate all or part of the income of the Trust and at the end of the year add the income to corpus. The distribution of income need not be in equal shares. In the discretion of the Corporate Trustee the Trustees may distribute income or any part thereof to any one or more of the Income Beneficiaries with or without making any distribution to the others. The trustees are also authorized, in the sole discretion of the Corporate Trustee, to distribute corpus to any Income Beneficiary for his or her proper health, maintenance, education, and support in the manner of living to which he or she is accustomed. In addition, the Trustees are authorized to distribute to the Primary Beneficiary so much of the corpus as she may request in writing in an amount not to exceed \$5,000 or 5 percent of the trust corpus in any calendar year.

Pursuant to Section 7.4 of Decedent's will, Trust will terminate at the earlier of: (A) 21 years after the death of the last to survive of any issue of Decedent who was living at the time of his death; or (B) upon the death of the Primary Beneficiary without surviving issue; or (C) upon the death of the last of the issue of the Primary Beneficiary to die after the death of the Primary Beneficiary.

If the Primary Beneficiary dies before the end of the period specified in Section 7.4(A), leaving issue surviving, the Trustees are to divide the Trust into separate equal trusts, one for each surviving child of the Primary Beneficiary and one for the issue of each deceased child of the Primary Beneficiary.

If the Trust terminates pursuant to Section 7.4(A), the Trust property then remaining is to be distributed to the issue of the Primary Beneficiary living at the termination of the trust, per stirpes. If the Trust terminates by reason of either Section 7.4(B) or 7.4(C), the Trust assets are to be distributed to the living issue of Decedent, per stirpes, or to another trust created under Decedent's will that is still in existence of which such issue is an Income Beneficiary. If Decedent has no issue at the time of the termination of the Trust, the trust estate is to be distributed to a charitable fund, or if the charitable fund is not in existence, to charity.

Under Section 8.5(D) of Decedent's will, the Primary Beneficiary has the right to remove the Corporate Trustee and to appoint in its place any trust company, bank or national banking association having its principal place of business in the state in which the Primary Beneficiary is then residing and having the

largest or second largest amount of trust funds in such state administered by its trust department.

Section 8.7 provides that the situs of the Trust shall be deemed to be at the principal office of the Corporate Trustee. The Trust is to be governed by the laws of the state of situs and is to be administered in accordance with the laws of such state. A change in the Corporate Trustee will effect a change in the situs of the Trust, unless the principal office of the successor Corporate Trustee is at the same place as that of the Corporate Trustee which resigned or was removed.

C has resided in State 2 since Year 3. C proposes to exercise her power under Article 8.5(D) to replace Bank 1 of State 1 with Bank 2 of State 2 as the Corporate Trustee. The primary reason for the proposed change is due to C's geographic proximity as a co-trustee to Bank 2.

A ruling is requested that the replacement of Bank 1 with Bank 2 of State 2 as the successor Corporate Trustee, pursuant to the exercise of C's power under Article 8.5(D), which will cause a change in the situs and a change in the applicable law governing the Trust from State 1 to State 2, will not affect the current grandfathered or exempt status of the Trust, and neither distributions from the Trust nor the termination of the Trust will be subject to the generation-skipping transfer tax imposed by section 2601.

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611 defines the term "generation-skipping transfer" to mean (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(b) defines the term "taxable distribution" to mean any distribution from a trust to a skip person (other than a taxable termination or a direct skip). Section 2612(a)(1)(A) provides, in essence, that a taxable termination occurs when an interest in a trust terminates, such as by death and, thereafter, only skip persons have an interest in the trust property.

Section 2613(a)(1) defines the term "skip person" as including a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor.

The Trust in this case is a generation-skipping trust because the trust provides for distributions to persons that are two or more generations below the Decedent's generation. Thus, unless the Trust is excepted from the generation-skipping transfer tax provisions by reason of § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1) of the Generation-

Skipping Transfer Tax Regulations, the Trust would be subject to the generation-skipping transfer tax.

Section 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the regulations provide 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 is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

The Trust in this case is a continuation of a trust which was irrevocable prior to September 25, 1985. It is represented that no additions, constructive or otherwise, were made to the original trust or to the Trust at issue since September 25, 1985.

A modification of a generation-skipping trust that is otherwise exempt under the Act and the regulations will generally result in a loss of its exempt or "grandfathered" status if the modification changes the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the trust.

C, as the Primary Beneficiary of the Trust, proposes to exercise her power under Section 8.5(D) of Decedent's will, to remove the Corporate Trustee and to appoint in its place Bank 2 of State 2. As a result of this action, under Section 8.7, the situs of the Trust will be deemed to be at the principal office of Bank 2 and the Trust will be governed by the laws of State 2 and will be administered in accordance with the laws of State 2.

C's power to replace the Corporate Trustee is a power given to her under the terms of Decedent's will. The fact that the change will result in a change in the situs and the applicable law governing the Trust from State 1 to State 2 is a change that occurs pursuant to the terms of Decedent's will. Therefore, the proposed modifications do not confer additional powers or beneficial interests upon any current or new trustee or upon any of the trust beneficiaries. Moreover, these modifications will not create any additional generation-skipping transfers or increase the amount of any generation-skipping transfers.

Based on the facts submitted and the representations made, we conclude that upon the replacement of the Corporate Trustee by C in her capacity as Primary Beneficiary and the resulting change in the situs and applicable law of the Trust, the Trust will continue to be exempt from the generation-skipping transfer tax. Provided there are no additions, constructive or otherwise to the Trust, neither distributions from nor the termination of the Trust will be subject to the generation-skipping transfer tax under § 2601.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this 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) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

By \_\_\_\_\_  
Katherine A. Mellody  
Assistant to the Branch Chief  
Branch 4

Enclosure  
Copy for section 6110 purpose