

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4- PLR-121738-98
Date: March 25, 1999

Re:

Legend

Husband =

Wife =

Bank =

Trust =

Beneficiary =

Daughter =

Granddaughter A =

Granddaughter B =

Grandson =

Year 1 =

Year 2 =

Date =

Court =

We received a letter dated November 25, 1998, from your authorized representative requesting rulings concerning the application of the generation-skipping transfer (GST) tax imposed by § 2601 of the Internal Revenue Code to the proposed modification of eight trusts.

According to the facts submitted, in Year 1 Husband and Wife created inter vivos trusts for the benefit of Daughter and Granddaughter A. Year 1 is prior to September 25, 1985. Subsequent thereto, but also prior to September 25, 1985, Granddaughter B and Grandson were born and, pursuant to the terms of the trust instrument, trusts were also created for the benefit of Granddaughter B and Grandson. You represent that Trust is one of eight trusts, and that the trusts are identical except for the beneficiaries and the investments.

Trust was created primarily for the benefit of Beneficiary, and such Beneficiary's issue. During the term of Trust, Bank, the corporate trustee, has the sole discretion to distribute the trust estate in the best interests of Beneficiary. If not otherwise terminated sooner, Trust terminates when Beneficiary dies, at which time the trust estate is to be distributed to Beneficiary's issue.

In Year 2, the trustees petitioned Court to modify Paragraph 6 of each trust instrument. As modified, Paragraph 6 provides that, should Husband cease or fail to serve as co-trustee with Bank, the following persons (in order of succession) shall serve as co-trustees with Bank: (a) Wife, (b) all of the following named persons: Daughter, Granddaughter A, Granddaughter B, and Grandson, (c) all of such of the persons named in (b) who are able to act. On Date, you received a private letter ruling from the Internal Revenue Service that the modification to the trusts in Year 2 did not cause any of the trusts to lose their exempt status for GST tax purposes under § 2601.

You now proposed to petition Court to modify Paragraph 6 once again. As modified, Paragraph 6 will provide that, should Husband cease or fail to serve as co-trustee with Bank, the following persons (in order of succession) shall serve as co-trustee with Bank: (a) Wife, and (b) the person for whom each trust is created and named, (with respect to Trust, Beneficiary). If both Husband and Wife are unable to act as co-trustee, and Beneficiary is unable to act as co-trustee, Bank shall serve as sole trustee.

You represent that no additions of assets, constructive or otherwise, have been made to any of the trusts subsequent to September 25, 1985. In addition, no modifications or amendments, other than the modification in Year 2 for which you received a private letter ruling on Date, have been made to any of the trusts. In addition, the trusts were irrevocable as of the date of creation, prior to September 25, 1985.

You have requested a ruling that the proposed modification to Paragraph 6 of Trust will not constitute an addition to Trust, or otherwise subject Trust to the GST tax under § 2601 of the Code.

Section 2601 provides that a tax is imposed on every generation-skipping transfer. Section 2611 defines the term "generation-skipping transfer" to mean a taxable termination, a taxable distribution, or 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 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.

Trust in this case is a generation-skipping trust because Trust provides for distributions to persons that are two or more generations below the transferors' generation. Thus, unless Trust is excepted from the GST 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, Trust would be subject to the GST tax.

Section 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1) of the 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 is

not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

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 interest, rights, or expectancies originally provided for under the terms of the trust.

Based on the facts presented and representations made, we conclude that the proposed modification of Trust is administrative in nature and will not result in any change in the quality, value, or timing of any beneficial interest in Trust. Consequently, Trust will continue to be exempt from the GST tax. Therefore, provided there are no additions, constructive or otherwise, to Trust, neither distributions from nor the termination of Trust will be subject to the GST tax under § 2601.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under the cited provisions or 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.

In accordance with a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure
Copy for § 6110 purposes