

INTERNAL REVENUE SERVICE
UIL 2601.00-00
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March 31, 1999

Re:

Legend:

Trustor:

Spouse:

Trust 1:

TIN:

Trust 2:

TIN:

Trustees for Trust 1 and Trust 2:

Subtrusts:

Subtrust A

TIN:

Subtrust B

TIN:

Subtrust C

Subtrust D

Subtrust E

Subtrust F

Subtrust G

Subtrust H

date 1:

date 2:

date 3:

date 4:

x:

y:

State:

Dear _____ :

We received your letter, dated _____, _____, submitted on behalf of Trustees, requesting rulings concerning the generation skipping transfer (GST) tax consequences of the creation of the proposed subtrusts under § 2601 of the Internal Revenue Code. This letter responds to that request.

The represented facts are as follows: Trustor created Trust 1 and Trust 2 on January 2, 1959. Trust 1 was created for the benefit of Spouse and Trustor's lineal descendants. Trust 2 was created for the benefit of Trustor's child and Trustor's lineal descendants. The dispositive terms of Trust 1 and Trust 2 are identical. Spouse died on date 4. Only Trustor's children and grandchildren are now living.

Trustor appointed both general and administrative trustees for Trust 1 and Trust 2. The general trustees are to function as a Committee. All powers granted to the Trustees are exercisable solely by the administrative trustee, subject to control by the Committee.

From the inception of Trust 1 on January 2, 1959, to date 2, the only beneficiary to whom Trustees made Trust 1 distributions was Spouse. These distributions were made out of Trust 1 income and principal. Spouse, however, only received Trust 1 distributions from 1969 to 1987, when the Trustees determined that Spouse no longer needed distributions from Trust 1 because of her substantial income from other sources.

Paragraph (a) in Article Two of Trust 1 provides that the Trustees in their discretion may accumulate income of Trust 1 and add it to principal, or may, at any time or from time to time, distribute any part or all of the income and principal to or among Trustor's lineal descendants and their spouses, and

Trustor's spouse. All distributions under paragraph (a) shall be at such time and for such proportions and amounts as the trustees shall determine, and the trustees shall have the power to omit from participation in any or all of such distributions any one or more of the persons among whom such distributions could be made.

Paragraph (b) of Article Two of Trust 1 provides that the distributions may be outright or in further trust for any one or more of the classes among which the Trustees may distribute, whether or not the members of the class are in being when the distribution is made. Trust 1 provides that the Trustees may select a trustee or trustees if the Trustees distribute in trust, may create powers of appointment in the trustee or trustees or in any beneficiary, may establish and select a committee for the trust with appropriate powers, including all the powers and functions granted the Trustees and "Committee" under Trust 1; provided only that any distribution to a new trust will be made so that no part of the income or principal of the new trust will at any time be distributed to any person to whom a distribution could not have been made under Trust 1.

Paragraph (c) of Article Two of Trust 1 provides that, if not otherwise terminated sooner, Trust 1 shall terminate twenty years and eleven months after the death of the last survivor of Spouse and all of Trustor's lineal descendants living on January 2, 1959. Upon termination, the Trustees will distribute all of the property remaining in the Trust 1, per stirpes, to those of Trustor's lineal descendants to whom the Trustees were authorized to make distributions immediately before the termination.

Paragraph (d) of Article Two of Trust 1 provides that, if not otherwise terminated sooner, Trust 1 shall terminate upon the death of the last survivor of Spouse and Trustor's lineal descendants, whenever born. On such termination, the Trustees, in their discretion, may distribute to any one or more of any surviving spouses of Trustor's lineal descendants such part or all of the property remaining in the trust, including all principal and undistributed income, as the Trustees shall determine. The Trustees shall distribute all the rest of such property, if any, to and among the persons who would have been entitled to my personal property, and in such proportions as they would have been entitled to, if Trustor, being then domiciled in State, had died intestate with respect thereto immediately following the death of the last survivor of Spouse and Trustor's lineal descendants. Any distribution hereunder to a surviving spouse of any of Trustor's lineal descendants shall be made not later than twenty years and eleven months after the death of the last survivor of Spouse and Trustor's lineal descendants living on January 2, 1959, and any property not so distributed within such time shall pass pursuant to the provisions of this Paragraph

(d) as if the Trustees had determined that no such property was to pass to any such spouse.

Paragraph (d) in Article Three of Trust 1 provides that notwithstanding anything to the contrary in this Article, at no time during Trustor's life shall the administrative trustee or more than one-half of the members of the committee be related or subordinate parties as that term is defined in § 672(c) of the Internal Revenue Code of 1954.

Paragraph (e) in Article Three of Trust 1 provides that all of the powers of the Trust are to be exercised by a majority of the Committee. In the event of any even division among the Committee, the administrative trustee will cast the deciding vote.

Paragraph (f) in Article Three of Trust 1 provides that no person to whom the Trustee is authorized to make distributions shall be eligible to serve as administrative trustee.

Paragraph (g) in Article Three of Trust 1 provides that the administrative trustee is authorized to make a discretionary distribution of income or principal pursuant to the authority granted the Trustees in Article Two, only after having given written notice to the Committee of the manner in which it intends to make such distributions, and only if such Committee, within thirty days after the mailing of such notice, shall not have exercised its power under Paragraph (f) of this Article, to compel the administrative trustee to refrain from making such distribution.

The Committee believes it is now appropriate to commence making distributions of Trust 1 income to Trustor's lineal descendants. On date 3, the Committee directed the administrative trustee to make income distributions totaling \$ x to the members of each of the Trustor's four family branches. The Trustees propose that because of the ages of certain beneficiaries, their shares of this income distribution should be made to separate subtrusts for the beneficiaries and their respective descendants.

On date 1, Subtrust A and Subtrust B were created for certain grandchildren of Trustor and were funded with distributions from Trust 2. After September 25, 1985, no distributions from Trust 2 have been made to Subtrust A and Subtrust B. No distributions from Trust 1 were used to fund Subtrust A and Subtrust B.

The Trustees now plan to create additional new subtrusts C, D, E, F, G, and H for y of the other grandchildren of Trustor.

Subtrusts C through H are to be funded with distributions from Trust 1. No funds from Trust 2 are to be used to fund Subtrusts C through H.

The dispositive terms of Subtrusts A through H are essentially the same as the dispositive terms of Trust 1, except that the distributees of income and principal of Subtrusts A, B, C, D, E, F, and G are limited to the named grandchild of the Trustor, his or her descendants, and the spouses of each grandchild and his or her descendants. If the family line of the grandchild dies out, the subtrust would be held for the benefit of the other descendants of the parent of that grandchild who is a child of the Trustor.

The distributees of income and principal of Subtrust H are limited to the named grandchild of the Trustor, her descendants, and the spouse of that grandchild and her descendants. If the family line of the grandchild dies out, Subtrust H would be held for the benefit of grandchild's older sibling, his descendants and the spouses of the sibling and his descendants. If neither the sibling, his spouse, or his descendants or their spouses are living, then Subtrust H will be held for the benefit of the lineal descendants and spouses of aunt. If the lineal descendants and spouses of aunt are not then living, Subtrust H would be held for the benefit of the lineal descendants and spouses of grandchild's father. If none of the lineal descendants and spouses of grandchild's father are living, Subtrust H would be held for the benefit of the Trustor's other lineal descendants and their spouses.

The terms of each of the Subtrusts A through H require that each Subtrust will terminate 20 years and 11 months after the death of the last survivor of the lineal descendants of Trustor living on January 2, 1959.

The Trustees request the following ruling:

For purposes of § 2601, (a) each Subtrust A through H will be considered to have been irrevocable on September 25, 1985, and (b) the transfer of assets from Trust 1 and Trust 2 to each of the Subtrusts A through H will not be treated as an actual or constructive addition to Trust 1, Trust 2, or the Subtrusts.

LAW

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by the "transferor" to a "skip person."

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

the GST Tax Regulations provide that the GST tax does not apply to any GST under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any GST under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 2611(a) defines the term "GST" as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a)(1) provides that a "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless immediately after the termination, a non-skip person has an interest in the property, or at no time after the termination may a distribution (including distributions on termination) be made from the trust to a skip person. 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(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that the term "skip person" means-- (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust--(A) if all interests in the trust are held by skip persons, or (B) if--(i) there is no person holding an interest in the trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust which is excluded from chapter 13 by § 26.2601-1(b)(1), a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13.

Section 26.2601-1(b)(1)(vi) provides that except to the extent that the provisions of paragraphs (b)(1)(iv) and (v) of this section allocate subsequent appreciation and accumulated income between the original trust and additions thereto, appreciation in the value of the trust and undistributed income added thereto are not considered an addition to the principal of a trust.

In this case, Trust 1 and Trust 2 are generation-skipping trusts because Trust 1 and Trust 2 provide for distributions to persons that are two or more generations below the Trustor's generation. Thus, unless Trust 1 and Trust 2 are excepted from

the GST tax provisions by reason of § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act), P.L. 99-514, 1986-3 (Vol. 1) C.B. 1, Trust 1 and Trust 2 would be subject to the GST tax.

Based on the information submitted and the representations made, we conclude that Trust 1 and Trust 2 were irrevocable trusts on September 25, 1985. Assuming that the Subtrusts A through H, created by the action of the Trustees, as described above, are authorized under the terms of Article Two of Trust 1 and Trust 2, in accordance with applicable state law, then we also conclude that, if no additions have been made to Trust 1 or Trust 2 after September 25, 1985, within the meaning of § 26.2601-1(b)(1)(iv), and no additions (actual or constructive) are made to any of the Subtrusts after funding (other than distributions from Trust 1 or Trust 2), each of the Subtrusts A through H will be considered to have been irrevocable on September 25, 1985, and the transfer of assets from Trust 1 and Trust 2 to each Subtrust A through H will not be treated as an addition (actual or constructive) of corpus to Trust 1, Trust 2, or to any of the Subtrusts.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions or any other provision of the Code.

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

Sincerely yours,

Christine E. Ellison
Branch Chief,
Branch 7
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)