

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
August 6, 1999

Legend

Donor =

Trust 1 =

Trust 2

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Daughter =

Son =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

PLR-104955-99

Year 5 =

Year 6 =

Year 7 =

Date 1 =

State =

Court =

This responds to a letter dated April 15, 1999, and prior correspondence submitted by your authorized representative on your behalf in which a ruling is requested concerning the generation-skipping transfer tax consequences of a proposed court construction of certain provisions in certain trusts.

As represented, the facts are as follows:

During her life, Donor created several trusts (collectively "the Trusts") which were or became irrevocable at her death.

Trusts 1 and 2 were created in Year 1 and amended and restated in their entirety in Year 3. Neither the original trust documents nor the restated trust documents contain any reference to adopted children in the context of "child" or "issue" as beneficiaries. Trust 1 was created for the benefit of Daughter and her issue; Trust 2 was created for the benefit of Son, Son's wife, and Son's issue.

Trust 3, for the benefit of Daughter and her issue, and Trust 4, for the benefit of Son, Son's wife, and Son's issue, were also created in Year 1. Neither trust document contains any reference to adopted children in the context of "child" or "issue" as beneficiaries.

Trust 5, for the benefit of Son, Son's wife, and Son's issue, and Trust 6, for the benefit of Daughter and her issue, were created in Year 2. Trust 5 was to benefit Daughter and her issue if, any time during its term, neither Son, nor Son's wife, nor any of Son's issue were living. Trust 6 was to benefit Son, Son's wife, and Son's issue if, at any time during its term, neither Daughter nor any issue of Daughter were living. Trust 5 and Trust 6 state that it is the intent of the Donor that the terms "child" and "issue" of Daughter, whenever used, include any child legally adopted at any time by Daughter and the issue of any child so adopted by Daughter.

In Year 2, State law changed and provided that, for instruments executed after

PLR-104955-99

Date 1:

The word "child," or its equivalent, in a grant, trust settlement, entail, devise, or bequest shall include an adopted child to the same extent as if born to the adopting parent or parents in lawful wedlock unless the contrary plainly appears by the terms of the instrument.

Prior to Year 2, State law provided:

The word "child," or its equivalent, in a grant, trust-settlement, entail, devise or bequest shall include a child adopted by the settlor, grantor or testator, unless the contrary plainly appears by the terms of the instrument; but if the settlor, grantor or testator is not himself the adopting parent, the child by adoption shall not have, under such instrument, the rights of a child born in lawful wedlock to the adopting parent, unless it plainly appears to have been the intention of the settlor, grantor or testator to include an adopted child.

Donor died in Year 5. Daughter died in Year 6 without issue. Following Daughter's death, the trusts created for her benefit (Trusts 1, 3, and 6), pursuant to their terms, continued for the benefit of Son, Son's wife, and Son's issue. Son died in Year 7, predeceased by his wife. Since Year 7, Trusts 1 through 6 have been held for the benefit of Son's issue. Son had five children, all of whom are now adults, and none of whom was adopted. Two of Son's children have children who are adopted.

Trusts provide the trustees with broad discretion to distribute income or principal as the trustees determine to be appropriate to the issue of Son from time to time. Since Son's death, the trustees of Trusts have exercised this discretion by distributing the income of Trusts in equal shares to Son's five children. Upon termination of Trusts, all assets are to be distributed to the then living issue of Son, by right of representation.

You propose to petition Court seeking a judgment clarifying that the terms "child" and "issue" as used in Trusts include adopted issue and you have requested a ruling that the entry of a judgment clarifying that Trusts include legally adopted children and their issue as beneficiaries will not result in the loss of exempt trust status for purposes of the generation-skipping transfer tax.

Section 2601 imposes a tax on every generation-skipping transfer made after October 22, 1986.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax 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

PLR-104955-99

made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added). The Trusts in the present case were irrevocable before September 25, 1985.

A modification of a trust that is otherwise exempt for purposes of Chapter 13 and the applicable regulations, will generally result in a loss of 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.

In this case, Donor had no adopted grandchildren or great-grandchildren at the time she executed any of the Trusts or, in fact, at the time of her death. Nevertheless, she made provision in Trusts 5 and 6, which were executed in Year 2, for adopted children in case Daughter, who was childless at the time, should ever choose to adopt. Moreover, Donor executed additional trusts in Year 4 for the benefit of Son, Son's wife, Son's issue, and Daughter and Daughter's issue, in which provision is specifically made for adopted children and the issue of adopted children.

A court order which clarifies the terms of a trust to include adopted children will not change the quality, value, or timing of any powers, beneficial interests, rights or expectancies originally provided for under the terms of the trust. Therefore, provided the Court order is approved as proposed, we conclude that the proposed Court order interpreting Trusts as including adopted children as "issue" does not constitute a modification of Trusts for purposes of § 2601. Distributions of trust assets consistent with such interpretation will not be subject to the generation-skipping transfer tax to the extent the distributions are not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

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.

In accordance with the powers of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

PLR-104955-99

By _____
Katherine A. Mellody
Senior Technician Reviewer
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Enclosure
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