

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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November 5, 1999

Legend:

Trust =
Trustor =
Trust A =

EIN:

Trust B =
Nephew =
Niece A =
Niece B =
Niece C =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
:

This is in response to a letter dated April 8, 1999, submitted on your behalf by your authorized representative, requesting a ruling on the generation-skipping transfer tax consequences of a proposed modification of Trust.

The facts submitted and representations made are as follows:

Trustor created Trust on Date 1 and amended it by a restatement on Date 2. Trust became irrevocable at Trustor's death on Date 3. Under the terms of the Trust, upon Trustor's death, a specified amount of money was set aside into two separate subtrusts, Trust A and Trust B. Trust A is currently being held for the benefit of two individuals for their lives. Upon the death of the survivor of the two individuals, the remainder of Trust A is to revert to the Trust. Trust B is currently being held for the benefit of Trustor's grandniece for her life. At her death, the remainder of Trust B will also revert to the Trust.

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Pursuant to the terms of the Trust, upon the death of Trustor's sister on Date 4, the Trust assets (not including Trust A and Trust B) were divided into four separate equal shares, one each for Nephew and his issue, Niece A and her issue, Niece B and her issue, and Niece C and her issue. The Trust authorizes the trustees to make discretionary payments of income and principal from each share to the primary beneficiary for whom the trust is set aside as the trustees deem necessary for that beneficiary's care, comfort, support and education. Any income in excess of the income paid to the primary beneficiary may, at the trustees' discretion, be either accumulated in trust or paid to the primary beneficiary's issue. Upon the death of the primary beneficiary, that beneficiary's share will be distributed to the beneficiary's issue outright, by right of representation, or, if the issue is less than age 25, held in further trust until the issue reaches age 25 and then distributed.

Nephew died on Date 5 and, under the terms of the Trust, his share was distributed outright to his children, per stirpes.

The Trust agreement provides that the Trust and all trusts created thereunder shall terminate no later than 21 years after the death of the last to die of Trustor and the descendants of a named ancestor of Trustor and their spouses who were living on the date of Trustor's death.

Article III of the Trust provides for the powers of the trustees. Under section 3.1.3, the trustees are given the power—

To invest and reinvest the principal, and income if accumulated, and to purchase or acquire therewith every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, all in a manner conforming with then existing law It is the intention of the Trustor to provide broad investment discretion to the Trustees and Investment Counsel to acquire and/or to continue to hold trust investments, without limitation, which the Investment Counsel or the Trustees, as the case may be, determine are desirable holdings. Without by implication in any way narrowing the powers and discretions provided elsewhere herein or by operation of law, the following are specifically confirmed: ... (b) the discretion to invest in stock, bonds, or other obligations and securities, and real and personal property of all types, and wherever located, whether or not said investments shall be of a type or nature which are speculative, are nonproductive assets, are wasting assets, or otherwise are of a character, size or concentration whereby, but for this express authority, they would not be considered as proper trust investments.

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The trustees propose to amend section 3.1.3 by adding the following language:

The discretions stated above shall expressly include, without limitation, the power to purchase securities on margin, sell securities short, purchase and sell put and call options, purchase and sell commodities and commodities futures contracts, and engage in any transaction involving a combination of the above powers.

It is represented that all beneficiaries of the Trust consent to the proposed amendment, and that the trustees will petition the appropriate local court for approval of the proposed amendment. It is also represented that no additions have been made to the Trust since September 25, 1985.

The following rulings are requested:

1) that the proposed amendment of the Trust will not be deemed an addition to the Trust so as to cause a portion of the Trust to be subject to the generation-skipping transfer tax.

2) that the proposed amendment of the Trust is not a substantial modification of the Trust so as to cause the Trust to be deemed a new trust created after September 25, 1985.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer (GST) made after October 26, 1986.

A generation-skipping transfer is defined under § 2611 as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612 (a) provides that the term taxable termination means a termination (by death, lapse of time, release of a power, or otherwise) of an interest in property held in trust unless (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) defines taxable distribution as any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Under § 2612(c)(1), a direct skip is defined as a transfer, made by a transferor to a skip person, which is subject to federal estate or gift tax.

A skip person is defined in § 2601(a) as –

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(1) a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor, or

(2) a trust –

(A) if all interests in such trust are held by skip persons, or

(B) if –

(i) there is no person holding an interest in such trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2652(a) defines transferor as the decedent, in the case of any property subject to the estate tax, and as the donor, in the case of any property subject to the gift tax.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax (GSTT) does not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985. However, this exemption does not apply to additions (actual or constructive) that are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(iv) states that, if an addition is made after September 25, 1985, to a trust which was irrevocable on September 25, 1985, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the GSTT provisions. If an addition is made, the trust is thereafter deemed to consist of two portions, a portion not subject to the GSTT and a portion subject to the GSTT.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided for in paragraph (B) of that section, where any portion of a trust remains in trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer for federal estate or gift tax purposes, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power) is not treated as an addition to a

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trust if (1) the power was created in an irrevocable trust that is not subject to the GSTT because it was irrevocable on September 25, 1985, and (2) in the case of an exercise, the power was not exercised in such a way that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period beyond the rule against perpetuities measured from the creation of the trust.

A modification of a trust that is otherwise exempt from the GSTT under the Act and the regulations will generally result in a loss of its “grandfathered” exempt 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 the present case, the Trust was irrevocable on September 25, 1985. It is represented that no additions have been made to the trust since that time. Therefore, unless the proposed amendment to the Trust is deemed an addition to the Trust or the proposed amendment changes the quality, value, or timing of the interests or powers provided for under the terms of the Trust, the Trust will remain exempt from the GSTT.

The proposed amendment to Section 3.1.3 of Article III of Trust conforms with the “broad investment discretion” already granted to the trustees under that section. The amendment is administrative in nature and does not confer any additional powers, interests, rights or expectancies upon the trustees or beneficiaries or change the quality, value or timing of any of the existing powers, interests, rights or expectancies. Moreover, the proposed amendment does not constitute an addition to the Trust within the meaning of §§ 26.2601-1(b)(1)(v)(A) or (B).

Therefore, based on the facts submitted and representations made, we conclude that the proposed amendment of the Trust will not be deemed an addition to the Trust so as to cause a portion of the Trust to be subject to the generation-skipping transfer tax, and that the proposed amendment of the Trust is not a substantial modification of the Trust so as to cause the Trust to be deemed a new trust created after September 25, 1985.

A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters.

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 the 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. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

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In accordance with the power 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) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)
By Katherine A. Mellody
Senior Technician Reviewer
Branch 4

Enclosure

Copy for §6110 purposes