

Internal Revenue Service

Department of the Treasury

Index Numbers: 2601-00.00

Washington, DC 20224

Number: **200015008**
Release Date: 4/14/2000

Person to Contact:
Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4-PLR-109451-99
Date:

January 4, 2000

Legend

Decedent =
Trust =

State =

Dear :

This is in response to your letter dated November 19, 1999, and prior correspondence submitted by your authorized representatives, in which you requested a ruling concerning the application of § 2601 of the Internal Revenue Code.

Decedent died in 1999, unmarried with no issue. Decedent had been under a guardianship of her person and estate since the age of 14, and was adjudged incompetent in 1928 when she reached the age of majority. In June 1986, Decedent's guardian petitioned the appropriate state court to create a revocable trust (Trust) for the lifetime benefit of Decedent. The petition was finally approved in December 1986 and the Trust was established December 31, 1986. The trust provides that on the Decedent's death, the residue is to be distributed to the Decedent's living nieces and nephews, and if a niece or nephew is not living, then per stirpes to their issue. Except for one item (noted below), the trust dispositive provisions followed the law of intestate succession of State that would otherwise have applied to Decedent's property at death. The Trust provided for a \$100,000 distribution to Decedent's companion, a nonfamily member. As noted, the Decedent died in 1999, still under a guardianship.

You have requested a ruling that transfers under Trust occurring by reason of Decedent's death are exempt from the generation-skipping transfer tax pursuant to § 1433(b)(2)(C) of P.L. 101-508, as amended, and § 26.2601-1(b)(3) of the Generation-Skipping Transfer Tax Regulations.

Section 2601 of the Code imposes a tax on every generation-skipping transfer.

PLR-109451-99

Under § 1431(a) of the Tax Reform Act of 1986, the GST tax generally applies to any generation-skipping transfer made after October 22, 1986, the date the statute was enacted. However, under § 1433(b)(2)(C) of the Act, the tax does not apply to any generation skipping transfer:

(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act), or reinvestments thereof, or (ii) which is a direct skip which occurs by reason of the death of any decedent; but only if such decedent was, on the date of the enactment of this Act [October 22, 1986], under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

Section 26.2601-1(b)(3)(i) provides, in part, that:

If an individual was under a mental disability to change the disposition of his or her property continuously from October 22, 1986, until the date of his or her death, the provisions of chapter 13 do not apply to any generation-skipping transfer: (A) Under a trust (as described in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during the individual's life after October 22, 1986); or (B) Which is a direct skip (other than a direct skip from a trust) that occurs by reason of the death of the individual.

These regulations were issued as Temporary Regulations on March 15, 1988.

In the present case, the Decedent was under a mental disability to change the disposition of her property continuously from October 22, 1986, until her death. The Decedent's guardian petitioned the appropriate court to establish the Trust in June 1986, and the petition was approved in December 1986. Prior to the establishment of Trust, the Decedent's property would have passed, on her death, pursuant to the State law of intestate succession. Under the terms of Trust, with the exception of one relatively minor distribution, the Decedent's property passed in the same manner as it would have passed prior to the establishment of the trust. Accordingly, notwithstanding that

PLR-109451-99

Trust was established on December 31, 1986, since the Decedent could not change the disposition of her property after October 22, 1986, and the establishment of the revocable trust did not otherwise alter the dispositive scheme that had been in place prior to the establishment of the trust, we conclude that the transfers under Trust occurring by reason of the Decedent's death, are exempt from the generation-skipping transfer tax pursuant § 1433(b)(2)(C) of P.L. 101-508, as amended, and § 26.2601-1(b)(3) of the Generation-Skipping Tax Regulations.

Except as we have ruled under the cited provisions of the Code, we express no opinion about the tax consequences of the proposed transaction under those provisions or under any other provisions of the Code.

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

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George L. Masnik
Chief Branch 4

Enclosure
Copy for 6110 purposes