

**Internal Revenue Service**

**Department of the Treasury**

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**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**

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**Date:**

May 3, 2000

Legend:      Date 1:  
                  Husband:  
                  Wife:  
                  Date 2:  
                  Date 3:  
                  Date 4:  
                  Date 5:  
                  Date 6:  
                  Husband's Trust:  
  
                  Son:  
                  Daughter:  
                  Date 7:  
                  Date 8:  
                  Date 9:  
                  Wife's Trust:  
  
                  Date 10:  
                  Grandchild 1:  
                  Grandchild 2:  
                  Grandchild 3:  
                  Date 11:  
                  Date 12:  
                  Court:

Dear

We received the July 1, 1999, letter and later submissions requesting a ruling on the application of the generation-skipping transfer (GST) tax provisions of Chapter 13 of the Internal Revenue Code to a construction of a trust. This letter responds to that request.

The facts and representations submitted are as follows. On Date 1, Husband and Wife created a revocable trust (Trust). This trust was amended by a complete restatement on Date 2. The trust was further amended on Dates 3, 4, and 5.

The amendment on Date 5 provided, in part, that Husband and Wife completely surrendered their right to alter, amend, modify, or revoke the trust except as the rights pertain to the portion of Trust originally contributed by him or her. Pursuant to this amendment, Husband surrendered the right to alter, amend, modify, or revoke that portion of Trust originally contributed by Wife (Wife's Trust), and Wife surrendered the right to alter, amend, modify, or revoke the portion of Trust originally contributed by Husband (Husband's Trust). Husband's Trust and Wife's Trust are herein collectively referred to as "Trust." But, the Trust remained revocable by Husband and Wife with respect to their pro rata share.

Husband died on Date 6, at which time Husband's Trust became irrevocable.

Article First of Trust, as amended, provides that while both Husband and Wife are living, the net income is to be paid to the following individuals: Husband - 2/5; Wife - 2/5; Son - 1/10; Daughter 1/10.

Article Second of Trust, as amended, provides that upon the death of either Husband or Wife, his or her share of income shall be added equally to the shares of Son and Daughter.

Article Third of Trust, as amended, provides that if either Son or Daughter dies leaving children surviving him or her, the share of income which such deceased child was entitled to receive shall be distributed as follows: 1/3 to the surviving spouse, if any, of such deceased child, for the lifetime of such spouse, or until termination of Trust, and the rest to the surviving child or children of such deceased child, share and share alike, for their respective lives or until the termination of Trust. Trust further provides that upon the death of either child leaving no surviving child, the share of income which such deceased child was entitled to receive shall be added equally to the shares of the survivor or survivors of the beneficiaries named in Article First.

Article Fourth of Trust, as amended, provides that Trust shall continue during the lives of Husband, Wife, Son, and Daughter, and the survivor thereof and for a period of 21 years after the death of the last survivor of them. Trust further provides that at the expiration of the 21-year period following the death of the last survivor, Trust shall terminate and the principal and any undistributed income will be distributed to the person receiving the income thereof as provided in Section Third of Trust.

On Date 7, Wife amended Trust to provide that on the death of Son leaving his wife surviving him, all trust income which would have been paid to him if he were living shall be paid to his wife for her life, and during her lifetime, no part of such income shall be paid to the child or children of Son who are living from time to time. That amendment further provided that

living issue of any deceased child of Son shall receive by right of representation the share of income to which his or their parent would have been entitled if living. Any child or issue of Son living at the termination of Trust shall be entitled to participate in the distribution of trust property in proportion to the shares of trust income to which they were entitled immediately prior to such termination. That amendment specifically provided that it would have no effect on any rights of Daughter, her spouse or children, as such rights were defined in Trust.

Wife further amended Trust on Date 8 to provide that a portion of Trust will be designated as Wife's Trust, and it shall comprise whatever assets identical with, or proceeds of, or otherwise fairly attributable to, the real estate, stocks, and bonds initially contributed to Trust by her.

Wife died on Date 9, at which time Wife's Trust became irrevocable.

The subject of the ruling request is the share of Husband's Trust and the share of Wife's Trust for the benefit of Daughter.

Daughter died on Date 10, survived by three children: Grandchild 1, Grandchild 2, and Grandchild 3.

After Daughter's death, her share of Trust income was payable to her three children (Husband and Wife's grandchildren). Grandchild 1 died on Date 11, with surviving children.

Trust is silent as to the disposition of trust income when a child of Husband and Wife dies leaving surviving children and one of those children subsequently dies. Thus, there is an ambiguity in Trust as to whether Grandchild 1's portion of Trust income is payable to Daughter's two surviving children or payable to the children of Grandchild 1.

In order to resolve this issue, a petition was filed in Court requesting an order construing this trust. On Date 12, Court issued an order which provides that, subject to the receipt of a favorable ruling from the Service, Trust is interpreted to provide for the distribution of income otherwise payable to a deceased child of Daughter to such child's descendants, per stirpes.

Trust was irrevocable prior to September 25, 1985, and it is represented that there have been no additions, actual or constructive, to Trust since that date.

A ruling is requested that the court's order interpreting Trust will not cause Trust to become subject to the GST tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax regulations provides that the tax does not apply to any generation-skipping transfer 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 generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate or gift tax.

Section 2612(c) 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) defines the term "skip person" to mean - -

(1) a natural person assigned to a generation that 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 the 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.

A modification of a generation-skipping trust that is otherwise exempt from the GST tax provisions will generally result in a loss of its "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.

We have examined the Court Order declaring the rights of the beneficiaries of Trust, and we believe that the court's order is consistent with applicable state law as it would be interpreted by the highest court of the state. See Commissioner v. Estate of Bosch, 387 U.S. 456 (1967). Accordingly, the judgment of the court resolving the ambiguity with respect to the trust terms does not result in any change to the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the Trust.

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

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

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

Sincerely,

James C. Gibbons

James C. Gibbons, Assistant to the Chief, Branch 7  
Badge #: 50-14362R  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures:

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