

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

May 16, 2000

Legend: Trust:

Date 1:

Mother:

Sister:

Date 2:

Date 3:

Bank:

Date 4:

Date 5:

Date 6:

State Statute:

Case:

Dear:

We received the June 23, 1999, request for rulings concerning the estate, gift, and generation-skipping transfer (GST) tax consequences of the creation of a trust. This letter responds to that request.

The facts and representations submitted are as follows. Trust was established by Taxpayer on Date 1, for her benefit. The original trustees of Trust were Mother and Sister.

Article I(a) of Trust provides that the trustees shall distribute the net income from Trust to Taxpayer, in quarter-annual or more frequent installments, for Taxpayer's life or until the termination of Trust, whichever event occurs first.

Article I(b) of Trust provides that the Trustees shall apply such amounts of trust corpus as they, in their sole and absolute discretion, deem necessary to provide liberally for Taxpayer's support, maintenance, medical care, education, and general welfare for Taxpayer's life or until the termination of Trust, whichever event occurs first.

Article I(c) of Trust provides that at any time after Taxpayer attains the age of thirty-six, she shall have the right to withdraw all or any part of the assets then remaining in Trust. Upon all of the Trust assets being distributed to Taxpayer, Trust shall terminate.

Article I(d) of Trust provides that if Taxpayer dies before the termination of Trust, assets remaining in Trust at the time of Taxpayer's death shall be distributed to Taxpayer's issue, per stirpes, or if no issue of Taxpayer are then living, the assets shall be distributed to Sister, or to her issue, per stirpes, if she is not then living; or if neither Sister nor any of her issue are then living, the assets shall be distributed to those persons then living who would be entitled to inherit personal property from the Taxpayer in accordance with the then applicable state laws of descent and distribution, whereupon Trust shall terminate.

Article XIII of Trust provides that any trustee shall have the right to resign at any time upon thirty (30) days written notice to the beneficiaries then entitled (either absolutely or at the discretion of trustees) to trust income, who shall, upon receipt of the notice, have the right within fifteen (15) days after receipt of such notice to appoint a successor trustee if no such successor trustee is designated in Trust or if designated is not qualified or declines to serve, and provided further there is no surviving trustee to continue to serve following the date of the resigning trustee's termination. Article XIII further provides that in the event a successor trustee is not designated within the specified time by the beneficiaries, the trustee desiring to resign may apply to a court of competent jurisdiction for the appointment of a successor trustee and for the judicial settlement of his or her or its accounts.

On Date 2, which was before September 25, 1985, Taxpayer, who had reached age thirty-six, executed a Waiver of Indenture of Trust, whereby she waived her rights to terminate Trust and to withdraw any portion of Trust corpus.

On Date 3, which was before September 25, 1985, Taxpayer, Mother, and Sister executed an Irrevocable Designation of Successor Trustee, designating Bank to serve as successor co-trustee with Sister upon the death, incapacity, or resignation of Mother.

Mother died on Date 4, survived by Taxpayer, Sister, Sister's three children, and Sister's two grandchildren. It is represented that Mother had no other living or deceased issue.

Under the terms of Mother's will, the residue of her estate is to be distributed to her issue, per stirpes. Article FOURTH of Mother's will provides that if any assets are held in trust for the benefit of Taxpayer under the terms of Trust, the portion of Mother's residuary estate

distributable to Taxpayer, rather than being distributed directly to her, shall be distributed to the trustees then serving, to be administered pursuant to the terms of Trust.

It is represented that Mother made no taxable gifts to her grandchildren or more remote issue, and that none of Mother's generation-skipping transfer tax exemption had previously been used.

It is represented that after allocating a small portion of Mother's GST tax exemption to certain assets which passed to Mother's grandchildren, the remainder of Mother's GST tax exemption exceeded the amount passing to Trust under Article FOURTH of Mother's will. It is represented that the personal representative of Mother's estate allocated the remainder of Mother's GST tax exemption to the portion of Mother's estate passing to Trust.

It is also represented that Form 706 for Mother's estate was filed on Date 5, and that an Estate Tax Closing letter was issued to Mother's estate on Date 6.

The trustees of Trust now propose to establish a second, separate trust, the corpus of which will consist of all assets which have been or will be distributed to Trust from Mother's estate. It is represented that the trustees would administer both trusts under the terms of the original Trust agreement dated Date 1 and modified on Date 2, but that at all times, the trustees would segregate the assets of each trust and would maintain separate custodial accounts, accounting records, etc. Hereinafter, Trust will be referred to as "Trust A" and the trust holding the property from Mother's estate will be referred to as "Trust B."

State Statute provides that, unless otherwise provided in the trust instrument, a trustee has the power to segregate by allocation to a separate account or trust a specific amount from, a portion of, or specific assets included in the trust property of any trust. That statute also provides that each separate trust must be held and administered upon the identical terms and conditions of the trust from which it was severed.

In the present case, the trustees are not prohibited under the terms of Trust or State law from segregating the portion of Trust from Mother's estate.

The following rulings are requested:

1. Upon Taxpayer's death, Taxpayer will be treated as the transferor of Trust A under §§ 2036 and 2612;
2. Mother will be treated as the transferor of Trust B for estate and GST tax purposes; and,
3. Taxpayer will not be treated as the transferor of Trust B for gift, estate, or GST tax purposes.

LAW AND ANALYSIS

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Sections 2036 through 2042 provide for the inclusion in the gross estate of property transferred by the decedent if the decedent has either retained an interest in, or power over, the property transferred.

Section 2601 of the Code imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means a taxable termination, a taxable distribution, or 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 property or (B) at no time after such termination may a distribution be made from such trust to a skip person.

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

Section 2613 defines a "skip person" as (1) a natural person who is assigned to a generation which is two or more generations below that of the transferor, or (2) a trust in which all the interests are held by skip persons, or (3) a trust where, after the transfer, no trust distributions may be made to a non-skip person.

Under § 2631(a), every individual is allowed a GST tax exemption of \$1,000,000, which may be allocated by such individual (or his executor) to any property with respect to which such individual is the "transferor."

Section 2652(a)(1) provides, as a general rule, that the term "transferor" means the decedent (in the case of property subject to the estate tax) or the donor (in the case of property subject to the gift tax). In applying this rule, the identity of the transferor, and, thus, the character of the transfer, is determined by reference to the most recent transfer of the property that was subject to the estate or gift tax. Thus, in the case of the bequest of a life income interest in a trust to a child of the decedent, with a remainder interest to a grandchild, the trust property is subject to estate tax in the estate of the decedent, and, as a result, the decedent is the transferor of the property.

Section 2654(b) provides that, (1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts and (2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts. Except

as provided in the preceding sentence, a single trust is not authorized to be treated as two or more trusts.

Under § 26.2654-1(a)(2)(i), if there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13.

Section 26.2654-1(a)(4) provides that with respect to a separate share treated as a separate trust, an individual's GST tax exemption is allocated to the separate trust.

Based on the information submitted and the representations made, we conclude that upon Taxpayer's death, Taxpayer will be treated as the transferor of Trust A for estate and GST tax purposes, and Mother will be treated as the transferor of Trust B for estate and GST tax purposes.

This ruling is based on the facts presented and the 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 in this ruling take effect, the ruling will have no force or effect.

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, Assistant to the Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

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