

Internal Revenue Service

Department of the Treasury

Number: **200050016**
Release Date: 12/15/2000
Index Number: 2601.03-01

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4/PLR-116443-99

Date:

September 13, 2000

Attn:
In Re:

Legend:

- Decedent -
- Spouse -
- Child A -
- Child B -
- Trust -
- Trustee -
- Date 1 -
- Date 2 -
- Date 3 -
- Date 4 -

Dear :

This responds to the letter from your authorized representative requesting rulings regarding the effect of the proposed judicial modification of the trust instrument for federal generation-skipping transfer tax purposes.

The submitted information and representations made are as follows:

Decedent established Trust, a revocable trust, on Date 1 and subsequently amended Trust on Date 2 and Date 3. Decedent died on Date 4, causing Trust to become irrevocable. Decedent was survived by Spouse, Child A, and Child B. Spouse is deceased and both Child A and Child B are living and have children. Trustee, an independent corporate trustee, is the current trustee of Trust. Trust is governed by the laws of the State of Georgia. The corpus of Trust consists of marketable securities.

Under the Trust's terms, as amended, upon Spouse's death the net income is to be paid in equal shares to Child A and Child B during their lives. Upon the death of the first to die of Child A and Child B, that child's share of the income will be paid to that child's descendants, per stirpes. Upon the death of the survivor of Spouse, Child A, and Child B, the corpus, plus unexpended income, will be paid in equal shares to the descendants of Child A and Child B, per stirpes. If either Child A or Child B die without being survived by descendants, the entire corpus will be paid to the descendants of the other child and if both die without surviving descendants, the corpus will be paid to

other more remote family members of Decedent.

Article IX of Trust, in part, authorizes the trustee to “sell and dispose of any part of the property held by it at any time . . . and to invest and reinvest all sums of money coming into its possession, according to its absolute discretion, in loans, stocks, bonds, securities or real estate, notwithstanding any law now or hereafter in force, limiting the class of investments for trustees or trust funds.”

Article X of Trust authorizes the trustee to invest in the common stock of certain specified companies. Article X further states:

If at any time Trustee in its discretion shall decide that it would not be to the advantage of the estate to purchase any of the above listed stocks, it shall not be required to do so; if, at any time, the Trustee in its discretion shall in the event it has already purchased stock of the above-listed companies, decide that it would not be to the advantage of the estate to continue to hold said stock it shall have the right to sell the same and invest and reinvest the proceeds in the common stocks of what are in its judgment the strongest corporations in the basic or leading lines of industry in the United States.

You represent that there have been no additions, actual or constructive, to the Trust after September 25, 1985.

Transaction

Trustee proposes to petition the appropriate local court to modify Trust. The modification will be contingent upon receiving a favorable ruling from the Internal Revenue Service concerning the effect of the modification on the Trust's exempt status for GST tax purposes.

Under the modification, as proposed, Trust will be partitioned into two equal separate trusts (subtrusts), one for the benefit of Child A and Child A's descendants and the other for the benefit of Child B and Child B's descendants. In all other respects, the dispositive provisions of each of the subtrusts will be the same as the dispositive provisions of Trust. The net income from the subtrust for Child A will be paid to Child A for life and the net income from the subtrust for Child B will be paid to Child B for life. Upon the death of the first to die of Child A or Child B, the net income from that child's trust will be paid to that child's descendants, per stirpes, until the death of the surviving child (Child A or Child B). At that time, the assets of each subtrust will be distributed, per stirpes, to the living descendants of both Child A and Child B, respectively. If either Child A or Child B is not survived by descendants, the assets of that child's subtrust will be distributed to the descendants of the other child. In the event that neither Child A nor Child B is survived by descendants, the assets of both subtrusts will pass to the same remote family members of Decedent as provided for in Trust.

In addition, the investment provisions of Trust will be modified to incorporate the fiduciary powers provided for under the laws of the State of Georgia as specified in §§ 53-12-232 and 53-12-287 of the Georgia Code Annotated.

Section 53-12-287 of the Georgia Code provides, in part:

(b) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a trustee shall exercise the judgment and care, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a trustee may consider the general economic conditions, the anticipated tax consequences of the investments, the anticipated duration of the account, and the needs of the beneficiaries.

Ga. Code Ann. § 53-12-287 (Michie 1981).

In addition, §53-12-232 of the Georgia Code provides, in part, that a trust may incorporate by reference the power:

(3) To invest and reinvest, as the fiduciary shall deem advisable, in common or preferred stocks, bonds, debentures, notes, mortgages, or other securities, in or outside the United States; in insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest or in annuity contracts for any beneficiary; in any real or personal property; in investment trusts, including the securities of or other interests in any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended; in participations in common trust funds; and generally, in such property as the fiduciary shall deem advisable even though the investment is not of the character approved by applicable law but for this paragraph;

You request a ruling that the proposed judicial partition and modification of the Trust will not constitute a constructive addition to the Trust and not otherwise subject the Trust and the subtrusts and the beneficiaries to the generation-skipping transfer tax imposed under § 2601 of the Internal Revenue Code.

Section 2601 imposes a tax on every generation-skipping transfer made after October 26, 1986.

A generation-skipping transfer is defined under § 2611(a) 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 where the property passes to a skip person with respect to the transferor of the property. Section 2612(b) provides that the term taxable distribution means 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 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, 2) a trust in which all the interests are held by skip persons, or 3) a trust where, after that transfer, no trust distributions may be made to a non-skip person.

Under § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer (GST) tax 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 GST tax provisions. If an addition is made, the trust is thereafter deemed to consist of two portions, a portion not subject to the GST tax and a portion subject to the GST tax.

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 trust if (1) the power was created in an irrevocable trust that is not subject to the GST tax 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.

Section 53-12-152 of the Georgia Code provides, in part, that:

(b) Upon petition by a trustee, beneficiary, or any party in interest for good cause shown, the court, after conducting a hearing with notice to all

parties in interest, in such manner as the court may direct, may divide a trust into two or more single trusts or consolidate two or more trusts into a single trust, upon such terms and conditions as it deems appropriate. The court shall not approve any such consolidation or division unless such consolidation or division:

- (1) Is not inconsistent with the intent of the grantor, donor, settlor, or testator with regard to any trust to be consolidated or divided;
- (2) Would facilitate administration of the trust or trusts; and
- (3) Would be in the best interest of all beneficiaries, and not materially impair their respective interests.

Ga. Code Ann. § 53-12-152 (Michie 1981).

A modification of a trust that is otherwise exempt for GST tax purposes 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 modification of the Trust is deemed an addition to the Trust or the proposed modification changes the quality, value, or timing of the interests or powers provided for under the terms of the Trust, the Trust and the subtrusts resulting from the partition will remain exempt from the GST tax.

After the partition of the Trust, as proposed, the subtrusts will continue to be governed by the same dispositive provisions currently in Trust. In addition, the administrative provisions governing the trustees of the subtrusts will be the same as the provisions set forth in Trust, subject to modifications set forth in the petition. The terms of the proposed partition ensure that each of the subtrusts will terminate at the same time. Thus, each of the subtrusts will have substantive terms identical to those of the original trust and the parties' beneficial interests will not change.

We conclude that the partition, as proposed, will not alter the quality, value or timing of any powers, or beneficial interests, rights or expectancies originally provided for under the terms of the Trust. Therefore, the proposed partition will not subject the Trust, or the subtrusts created under its terms, to the generation-skipping transfer tax.

Also, the modification of Articles IX and X of Trust by the incorporation of §§ 53-12-232 and 53-12-287 of the Georgia Code conforms with the trustee's authority to "sell and dispose of any part of the property . . . and to invest . . . in loans, stocks, bonds, securities or real estate" already granted to the trustees under Article IX. The

modification 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 modification does not constitute an addition to the Trust within the meaning of §§ 26.2601-1(b)(1)(v)(A) or (B).

Accordingly, the terms of the Trust, as modified pursuant to the terms of the proposed petition, will not affect the exempt status of the Trust for generation-skipping transfer tax purposes, and will not result in a transfer of property that will subject the Trust to the generation-skipping transfer tax imposed under § 2601. In addition, the proposed partition of the Trust into subtrusts will not subject the subtrusts to the generation-skipping transfer tax.

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.

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,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: George Masnik, Branch Chief, Branch 4

Enclosure
Copy for section 6110 purposes