

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date: JULY 28, 2004

Re:

Legend

Decedent =

Son =

Child A =

Child B =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Dear :

This responds to a letter dated July 1, 2003, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of a proposed partition of Trust.

Decedent died testate, a domiciliary of State, on Date 1, prior to September 25, 1985. Decedent was survived by Son and his two children, Child A and Child B. Subsequently, Son died on Date 2.

Under Decedent's last will and testament dated Date 3, and finally amended by codicil on Date 4, Decedent bequeathed an 1/8 share of the residue to a testamentary trust, Trust, for the benefit of Son and Son's descendants. Under the terms of Trust, an independent trustee has the discretion to distribute income and principal to Son and Son's descendants.

Article Tenth, III, (b)(3) of the Will provides:

Whenever any payment of principal is made to or for the use of any one or more descendants of my said son, a proportionately equivalent amount of principal shall likewise be paid to or applied to the use of other then living descendants of said son to the extent necessary to maintain a substantial degree of equality, per stirpes, in the distribution of principal among his descendants.

Similarly, Article Tenth, III, (b)(4) provides that if income is paid to a descendant of Son, the trustee should, in general, maintain substantial equality, per stirpes, with respect to the other descendants. It is represented that under these provisions if the independent trustee makes a distribution to a beneficiary who is a member of one family line, the trustee must also make a distribution to the other family line.

The Trust is to terminate 21-years after the death of the last to die of Decedent's descendants surviving upon Decedent's death. Upon termination, the trust assets are to be distributed, in equal shares, per stripes, to the then living beneficiaries of the trust.

The independent trustee proposes to petition the appropriate local court requesting that Trust be divided into two equal trusts. In general, the dispositive terms of the new trusts will be identical to the dispositive terms of Trust, except that Child A and Child A's descendants will be the beneficiaries of one trust (Trust A), and Child B and Child B's descendants will be the beneficiaries of the other trust (Trust B). Consequently, the new trusts will not contain provisions similar to Article Tenth, III, (b)(3) and (b)(4) requiring the equalization, per stirpes, of principal and income distributions.

Further, Trust A and Trust B will terminate at the same time as provided in Trust, that is, 21 years after the death of the last to die Decedent's descendants living on Date 3. If a new trust terminates prior to that date, because all beneficiaries have died, and the other new trust is still in existence at that time, then the trust corpus of the terminating trust will be distributed to that other new trust. Finally, Trust will be severed on a pro rata basis such that Trust A and Trust B will receive an equal portion of each asset held in Trust.

You have requested a ruling that the new trusts resulting from the partition of Trust will continue to be exempt from the tax imposed by section 2601.

Section 2601 imposes a tax on every generation-skipping transfer. Under § 1433(a) of the Tax Reform Act of 1986 (Act), the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to any generation-skipping transfer from a trust,

if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under § 2038 or § 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of section 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST tax authorizes the trustee to distribute income and principal, at the trustee's discretion, for the benefit of A and B and their respective issue. On the death of the last to die of A and B, the corpus is to be distributed to the issue of A and B, per stirpes. Pursuant to a court order, the trust is divided equally into two trusts, one for the benefit of A and A's issue, and one for the benefit of B and B's issue. The example concludes that, under the facts presented, the division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division, and the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Accordingly, the two partitioned trusts will not be subject to the provisions of chapter 13.

In the present case, Trust was created before September 25, 1985 and no additions have been made to the trust after that date. We conclude that the division of Trust into Trust A and Trust B, as described above will not shift a beneficial interest in the Trust to any beneficiary who occupies a lower generation than the person or persons that held the beneficiary interest prior to the severance. Further, the severance

will not extend the time for vesting of any beneficial interest beyond the period provided in Trust.

Accordingly, based on the facts submitted and the representations made, we conclude that a court approved partition of Trust into Trust A and Trust B will not adversely affect Trusts' status as exempt from the GST tax and Trust A and Trust B created as a result of the severance will remain exempt from the GST tax.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

By _____
George L. Masnik
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes

cc: