

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-145720-01

Date:

December 20, 2001

Re:

Legend

Grantor =
Spouse =
Daughter =
Son =
Trust =

Daughter's Trust =

A =
B =
Bank =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Court =

Dear _____ :

This responds to your letter dated May 11, 2001, requesting a ruling on behalf of the above-referenced taxpayers regarding the generation-skipping transfer (GST) tax consequences of the proposed modification of Daughter's Trust.

FACTS

PLR-145720-01

The facts submitted and representations made are as follows. On Date 1, Grantor created Trust, a revocable trust. Trust was amended on Date 2, Date 3, and Date 4. Grantor died on Date 5, prior to September 25, 1985. Under the terms of the trust agreement, at Grantor's death, Trust became irrevocable and the corpus was divided into two trust shares known as "Trust A" and "Part B." Trust A was for the benefit of Grantor's wife, Spouse, for her life, with the remainder to be distributed as directed in her last will and testament. At Grantor's death, Part B was further divided into two separate and equal shares for Grantor's children, Daughter and Son. The separate share created under Part B of Trust for Daughter, Daughter's Trust, is the subject of this ruling request.

Daughter's Trust provides for discretionary income distributions to a group consisting of Daughter and her children, A and B, and the descendants of any deceased children of Daughter. The amount, frequency and recipient of a discretionary income distribution is determined by the corporate trustee acting alone, with no individual trustee taking part in the determination. In addition, the corporate trustee, acting alone, is authorized at any time and from time to time to encroach upon the corpus of the trust in such amounts as the corporate trustee may deem necessary for the proper support maintenance and education of any person then eligible to receive any trust income. Upon the death of Daughter and either one of her children, the trust agreement provides that Daughter's Trust is to be divided into as many shares as Daughter has then living children and deceased children with descendants then living. The descendants of Daughter's deceased children, if any, are to receive their shares outright, while the shares for the living children are to continue in trust until their death, at which time any remaining trust assets will be distributed outright to the then living descendants of the child. At the present time, Daughter has no deceased children. A has three children and B has two children.

The trust agreement provides that Son is to serve as the individual trustee of Daughter's Trust along with a corporate trustee. The trust agreement also provides that, should Son die, fail to qualify, or otherwise fail to serve, Daughter becomes the successor individual trustee. Should both Son and Daughter fail to qualify as trustee or otherwise cease to serve, the corporate trustee is to serve as the sole trustee. Son served as trustee until Date 6, when he resigned as trustee of Daughter's trust. Pursuant to the trust agreement, Daughter succeeded to the position of sole individual trustee. At the present time, Bank serves as the corporate trustee.

On Date 7, the parties filed a petition with Court requesting a modification of Trust to provide that upon the death of Daughter, A and B, or the survivor of them, would succeed to the position of individual co-trustee of Daughter's Trust to serve with the corporate trustee. On Date 8, Court granted the requested relief, conditioned upon the receipt of a favorable private letter ruling from the Internal Revenue Service regarding the GST tax consequences with respect to Daughter's Trust.

You represent that no additions, actual or constructive, have been made to Daughter's Trust since September 25, 1985. You have requested a ruling that the

PLR-145720-01

proposed modification will not cause Daughter's Trust to lose its exempt status for GST tax purposes and, therefore, Daughter's Trust remains exempt from the GST tax.

LAW AND ANALYSIS

Section 2601 imposes a tax on each generation-skipping transfer made by a transferor to a skip person.

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

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 generation-skipping transfer or the creation of a new generation-skipping transfer.

Section 26.2601-1(b)(4)(i)(E), Example 10, considers a situation where, in 1980, a grantor executed an irrevocable trust for the benefit of the grantor's issue, naming a bank and five other individuals as trustees. In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees. The example concludes that the modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation than the person or persons who held the beneficial interest prior to the modification. The modification also does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the example concludes that such administrative changes will not cause the trust to be subject to the provisions of chapter 13.

In the present case, Daughter's Trust was irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, have been made to the trust

PLR-145720-01

after that date. The Court has granted the parties' petition to modify the trust instrument to provide for successor individual trustees should Daughter fail to qualify or otherwise cease to serve. Under the terms of Daughter's Trust, A and B, as trustees, will not participate in any decisions regarding the distribution of trust income or corpus. Accordingly, as in Example 10, the proposed modification is administrative in nature and will not result in a shift of any beneficial interest to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the modification. Further, the proposed modification will not extend the time for vesting of any beneficial interest beyond the period provided for in the trust agreement.

Therefore, based on the facts submitted and representations made, we conclude that the proposed modification to provide for successor individual trustees for Daughter's Trust will not cause Daughter's Trust to lose its exempt status for purposes of the GST tax and, therefore, Daughter's Trust will not be subject to the provisions of chapter 13.

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.

Sincerely yours,
By: George L. Masnik
Branch Chief
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes

cc: