

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-103069-04

Date:

January 11, 2005

In Re:

Legend

- Grantor =
- Original =
- Trust
- Date 1 =
- Spouse =
- Child 1 =
- Child 2 =
- Child 3 =
- Date 2 =
- Date 3 =
- Date 4 =
- State =
- Statute =

Dear :

This letter responds to your letter, dated July 27, 2004, and prior correspondence requesting rulings regarding the generation-skipping transfer (“GST”) tax consequences of the trustees’ proposed pro rata distribution of Original Trust assets into three resulting trusts.

Grantor created Original Trust on Date 1 for the benefit of Spouse and Grantor’s issue. Grantor has three children: Child 1, Child 2, and Child 3. Spouse renounced her beneficial interest in Original Trust on Date 2. Date 1 and Date 2 are prior to September 25, 1985. With regard to certain trustee provisions, the trust instrument was amended

on Date 3. The Internal Revenue Service issued a private letter ruling on Date 4 providing that after the Date 3 amendment, Original Trust would continue to qualify as a trust that was irrevocable on September 25, 1985, for purposes of being exempt from the GST tax. Date 3 and Date 4 are after September 25, 1985. The trustees represent that no additions, actual or constructive, have been made to Original Trust after September 25, 1985.

Article I, paragraph 1 of the Original Trust agreement, as amended on Date 3, provides that the net income and/or principal, including the whole thereof, may be paid to one or more of a class of persons consisting of Spouse, Child 1, Child 2, Child 3, and Grantor's more remote issue in the trustee's discretion. Any income not so paid shall be added to principal at least annually. Distributions of principal need not be made equally.

Article I, paragraph 2 of the Original Trust agreement, as amended on Date 3, provides that the trust shall continue until twenty-one years after the death of the last survivor of certain named lives in being on Date 1. Upon the termination of the trust, the principal shall be distributed to the grantor's then living issue, in equal shares, per stirpes. If there are no living issue, the trust principal shall be distributed to the person(s) who would take from the Grantor had he died intestate at the time of the termination under the laws of State then prevailing.

The current beneficiaries of Original Trust have differing financial needs and investment philosophies. In order to better meet the needs of the beneficiaries, the trustees propose to exercise their broad discretion to distribute principal under Article I, paragraph 1 and their authority under State Statute to appoint the principal of Original Trust into three new trusts (collectively, the "resulting trusts"). In accordance with State Statute, all assets held in Original Trust will be distributed to the resulting trusts in a pro rata manner.

The resulting trusts will have the same terms as Original Trust with the following exceptions. Each resulting trust will be for the benefit of one of the Grantor's children and that child's issue. Child 1, Child 2, and Child 3 will each have a testamentary limited power to appoint the principal of the trust held for his or her family's benefit to or in trust for the Grantor's issue (other than the child, the child's estate, the child's creditors, or the creditors of the child's estate). Any trust not effectively appointed will remain in further trust for the deceased child's issue for the remainder of the trust term. Any property passing to a niece or nephew of the Grantor prior to the expiration of the trust under Article I, paragraph 2 will be held in trust for the niece or nephew until he or she reaches age fifty. If such niece or nephew dies prior to reaching age fifty, the remaining property is to be distributed to his or her estate. Each such trust for a niece or nephew of the Grantor and any trust created pursuant to a child's exercise of his or her testamentary limited power of appointment must terminate, if not sooner terminated, upon the expiration of the period defined in Article I, paragraph 2.

The trustees have requested the following rulings relating to the proposed transaction: (1) the transfer of assets from Original Trust to the resulting trusts will not be subject to the GST tax, (2) the transfer will not subject future distributions from the resulting trusts to the GST tax, and (3) the transfer will not subject the termination of the resulting trusts to the GST tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term “generation-skipping transfer” to include a taxable distribution, taxable termination, and a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, GST tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor’s gross estate under §§ 2038 and 2042. In the present case, Original Trust is considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(4) 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 under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. 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 § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, 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 in the

original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Section 26.2601-1(b)(4)(i)(E), Example 1, provides that in 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established A had two children, B and C. A corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse, or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate twenty-one years after the death of the last child of A to die who was alive at the time Trust was executed. Trust will terminate on the death of A, at which time the remaining principal will be distributed to A's issue, per stirpes. In 2002, the trustee distributes part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate 21 years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C, per stirpes. The terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of Trust, extending beyond any life in being at the date of creation of Trust plus a period of twenty-one years, plus if necessary, a reasonable period of gestation. Therefore, neither Trust nor the new trust will be subject to the provisions of chapter.

In this case Original Trust is a GST trust because it provides for distributions to more than one generation of beneficiaries below the grantor's generation. Date 1 is prior to September 25, 1985, and Original Trust was irrevocable on September 25, 1985. The Date 3 amendment relating to the trustee provisions was administrative in nature and the Service previously ruled that it would not cause Original Trust to be subject to the GST tax. Original Trust, therefore, is exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i).

The transaction proposed by the trustees is within the authority granted to them in the Original Trust agreement and under State Statute. Based on the facts submitted and the representations made, we conclude that the proposed distribution of Original Trust assets into the resulting trusts is substantially similar to the transaction in Example 1 of § 26.2601-1(b)(4)(i)(E). In this case, the resulting trusts will have the same terms as the Original Trust with certain exceptions. The exceptions do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period extending beyond any life in being on Date 1 plus twenty-one years. Therefore, the

proposed transaction will not affect Original Trust's status as exempt from the GST tax. As a result, the proposed transaction will not cause distributions from or terminations of any interests in Original Trust or any of the resulting trusts to be subject to the GST tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 an 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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

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

Sincerely,

Melissa C. Liquerman  
Branch Chief, Branch 9  
(Passthroughs & Special Industries)

Enclosure

Copy of letter for § 6110 purposes