Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.7-PLR-118524-98
Date:
January 26, 1999

In Re:

Legend:

The Grandchildren's Trusts:

Trust 1:

TIN:

Trust 2:

TIN:

Trust 3:

TIN:

The Foundation:

B:

C:

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D:

E:

F:

G:

Bank:

Date 1:

Date 2:

State:

Court:

x:

In a letter, dated , , you requested a ruling that the modification of the provision of the trust agreement relating to the appointment of successor individual trustees of the Trusts will not cause the Grandchildren's Trusts to be subject to the generation-skipping transfer (GST) tax imposed by § 2601 of the Internal Revenue Code. This letter responds to your request.

The facts and representations submitted are summarized as follows:

On Date 1, A (now deceased) and B executed an irrevocable trust agreement to establish the Grandchildren's Trusts. A and B named their only child, C , and C's spouse, D as two of three co-trustees of the Grandchildren's Trusts. Bank was named as the third co-trustee of the Grandchildren's Trusts. All three co-trustees are currently serving as co-trustees of the Grandchildren's Trusts. The trust agreement establishes three separate trusts, one for the benefit of each of the three grandchildren of A and B, E, F, and G. Except for the identity of the beneficiaries, the terms of the three trusts are identical. Each of E, F, and G is the sole income beneficiary of one of the trusts during his or her lifetime.

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During the term of each trust, the co-trustees are authorized to accumulate the net income of the trusts or they may pay all or part of the net income of a trust to the trust beneficiary for the beneficiary's, education, maintenance, or support or for any other purpose or purposes for the beneficiary's benefit as the co-trustees in their sole judgment may determine is appropriate. Under the terms of the trust agreement, any determination with respect to any discretionary payment of property to a beneficiary is to be made by Bank.

Any time after Date 2, the co-trustees may distribute to the beneficiary out of the principal of his or her trust up to one-quarter of the then remaining principal of his or her trust as the Trustees in their sole discretion may determine is appropriate for that beneficiary. After the beneficiary of the trust attains the age of fifty, the co-trustees may distribute to the beneficiary out of the principal of his or her trust up to one-third of the then remaining principal of his or her trust as the co-trustees in their sole discretion may determine is appropriate for that beneficiary. After the beneficiary of the trust attains the age of 65, the co-trustees may distribute to the beneficiary out of the principal of his or her trust up to one-half of the then remaining principal of his or her trust as the co-trustees in their sole discretion may determine is appropriate for that beneficiary. The balance of the principal is to remain in trust during the rest of the life of the trust's beneficiary.

Subject to a special power of appointment exercisable by will at the death of the beneficiary, all of the trust property is to be held under the terms of the trust agreement in separate trusts for the benefit of the beneficiary's issue who survive him or her, per stirpes. If none of the beneficiary's issue are living at the beneficiary's death, the remaining trust property will continue to be held under the terms of the trust agreement for the benefit of the issue of C who survive the beneficiary. If no issue of the beneficiary and no issue of C survive the beneficiary, then all of the remaining trust property will pass to C, if she survives the beneficiary. If C does not survive the beneficiary, the remaining trust property at the time of beneficiary's death will pass to Foundation. Finally, the Grandchildren's Trusts terminate 21 years after the death of the last survivor of A and B or their issue who is living on Date 1.

The trust agreement grants the beneficiary of each trust a testamentary power of appointment with respect to one-half of the trust property. This testamentary power of appointment is exercisable only if the beneficiary attained age 65 as of his or her death. The power of appointment is exercisable in favor of any one or more of a group consisting of the issue of A and B, the spouses of the issue of A and B, and charities. The power of appointment is not exercisable in favor of the beneficiary, his or her creditors, his or her estate, or the creditors of his or her estate.

The trust agreement provides that if Bank should resign as trustee or should bank fail, cease, or become disqualified to act as trustee, a successor trustee shall be

appointed by A and B or by the survivor of A and B. If both A and B are deceased, or if A and B fail to appoint a successor trustee within thirty days, or if A and B acting separately name different successor trustees, the successor trustee shall be appointed in accordance with the applicable laws of State. Further, the trust agreement provides that the successor trustee must be a bank or trust company with power to act as trustee and having capital and surplus aggregating at least x dollars.

The trust agreement, as written, does not address the appointment of successors to the individual co-trustees of the Grandchildren's Trusts. The co-trustees of the Grandchildren's Trusts propose to modify the Grandchildren's Trusts to include a provision allowing for the appointment of successors to the individual co-trustees of the Grandchildren's Trusts. Trustees of the Grandchildren's Trusts have petitioned Court to modify the trust agreement to add the following provision to allow the appointment of successors to the individual co-trustees of the Grandchildren's Trusts:

> When the last to serve of C or D ceases to serve as trustee of any trust hereunder, then the following persons shall serve as individual co-trustees with Bank:
>
> 1. E shall serve as co-trustee of Trust 1.
> 2. F shall serve as co-trustee of Trust 2.
> 3. G shall serve as co-trustee of Trust 3.
>
> Each individual, while serving as co-trustee, shall have the power to provide for his or her successor co-trustee, effective upon or after his or her failing or ceasing to serve as trustee. This power can be exercised only by a written, acknowledged instrument placed in the files of the trust. Any such instrument may be revoked or amended prior to the time it becomes effective. If an individual co-trustee of any trust hereunder fails to appoint his of her successor co-trustee, then the individual co-trustees of the other trusts created hereunder shall appoint an individual to serve as co-trustee of that trust.

In addition, the proposed amendment to the trust agreement provides that no individual shall be entitled to any compensation for services rendered as a trustee, but each shall be entitled to reimbursement for expenses incurred in performing duties under the trust agreement.

It is represented that there have been no additions to the Grandchildren's Trusts.

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor'" to a "skip-person.'"

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the tax does not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii) 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.

Section 2611(a) defines the term "generation-skipping transfer'" as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate or gift tax.

Section 2612(c)(1) defines the term "direct skip'" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person'" to mean--

(1) a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or

(2) a trust--

(A) if all interests in such trust are held by skip persons, or

(B) if--

(i) there is no person holding an interest in the trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

The Grandchildren's Trusts are generation-skipping trust because the trust agreement provides for distributions to more than one generation of beneficiaries below

the generation of A and B. Because, however, the Grandchildren's Trusts were irrevocable on September 25, 1985, and there have been no additions to the trusts since that date, the Grandchildren's Trusts have been exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i). You have requested a ruling that the proposed amendment to the trust agreement relating to the appointment of successor individual trustees of the Grandchildren's Trusts will not cause the Grandchildren's Trusts to be subject to the GST tax.

An amendment to a trust, which was irrevocable on September 25, 1985, and, thus, is exempt from the GST tax, will cause the trust to lose its exemption if the amendment modifies or otherwise changes the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of the trust. A trust's exemption from the GST tax is not affected, however, by amendments relating to the administration of a trust.

Based on the information submitted and the representations made, we conclude that the proposed amendment to the trust agreement relates to the administration of the Grandchildren's Trusts and will not modify or otherwise change the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of the trust agreement. Thus, the proposed amendment of the trust agreement will not affect the exempt status of the Grandchildren's Trusts for purposes of chapter 13. Accordingly, neither distributions to skip persons nor terminations of interests of non-skip persons will be subject to the GST tax.

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

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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.

Sincerely yours,

(signed) Christine Ellison

Christine E. Ellison
Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures