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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:
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Refer Reply To:
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Date: April 29, 1999

Re:
Legend

Decedent =
Daughter A =
Daughter B =
Son =
Granddaughter A =
Granddaughter B =
Grandson =
Great grandchild A =
Great grandchild B =
Great grandchild C =
Great grandchild D =
Great grandchild E =
Great grandchild F =
Great grandchild G =
Great grandchild H =
Great grandchild I =
Trust =
date 1 =
date 2 =
date 3 =

This is in response to your letter dated January 22, 1999, in which you request several rulings concerning the partition of Trust.

Decedent died testate on date 1. Under the terms of his will, Decedent bequeathed his residuary estate to his trustees, in trust, to be divided into separate equal shares for each of his children. Decedent was survived by three children, Daughter A, Daughter B, and Son.

Decedent appointed three individuals and a bank to serve as cotrustees. His will directs that there shall always be at least two individuals serving as trustees and that, if the number of individual trustees should be fewer than two, a petition shall be made to a court for the appointment of one or two individuals,

244

whichever is necessary.

By court decree of date 2, the three separate shares of Decedent's residuary trust became three separate trusts, each governed by the same terms as the original trust.

At the present time, two individuals and a bank are serving as cotrustees of the trust for Daughter A, which is the subject of this ruling request. Under the trust (Trust) for Daughter A, the trustees are to pay the Trust income to Daughter A for her life, and on her death, to pay one-half of the income to Grandson, or his issue after his death; one-quarter of the income to Granddaughter A, or her issue after her death; and one-quarter of the income to Granddaughter B, or her issue after her death. If either Granddaughter A or Granddaughter B should die prior to the termination of the Trust not survived by issue, then one-third of the income payable to such granddaughter's family is to be paid to the surviving granddaughter or her family, and two-thirds of the income is to be paid to Grandson, or his surviving issue. If the issue of Grandson die prior to the termination of Trust, then the share of income payable to the Grandson's issue is to be divided equally and paid to Granddaughter A and B, or their respective issue.

Trust terminates 21 years after the death of the last surviving descendant of the Decedent who was living on the date of his death. Upon termination, the principal is to be distributed to the persons then entitled to receive income in the proportions in which income is then being paid to them. If all of Daughter A's issue die before the trust terminates, then the principal is to be added to the trusts created for Daughter B and Son.

Daughter A died on date 3. Grandson predeceased Daughter A. Grandson is survived by nine children. The Trust currently distributes one-half of the income to Grandson's issue, one-quarter to Granddaughter A, and one-quarter to Granddaughter B.

The trustees intend to file a petition in state court to divide the Trust into six trusts: (1) one-fourth of the principal to be held in trust for the benefit of Granddaughter A and her descendants; (2) one-fourth of the principal to be held in trust for the benefit of Granddaughter B and her descendants; (3) four-eighteenths of the principal to be held in trust for the benefit of Great grandchildren A, B, C, and D and their descendants; (4) one-eighteenth of the principal to be held in trust for the benefit of Great grandchild E and her descendants; (5) one-eighteenth of the principal to be held in trust for the benefit of Great grandchild F and his descendants; and (6) three-eighteenths of the principal to be held in trust for the benefit

of Great grandchildren G, H, and I and their descendants. The successor trusts will be governed by the same dispositive provisions as the original Trust.

In addition, the current individual trustees intend to resign from the Granddaughter A trust and the Great grandchild E trust. The petition will asked the court to appoint one of Granddaughter A's daughters and a third-party individual to replace the resigning individual trustees of Granddaughter A's trust and to appoint Great granddaughter E and the same-third party individual to replace the resigning individual trustees of Great Granddaughter E's trust.

It is represented that under state law, Trust may be partitioned in a pro rata manner. In particular, the assets of Trust will be divided pro rata except to the extent a pro rata division would be impractical or impossible due to the nature of the investment (i.e., fractional shares of stock or unmarketable units of bonds). It is further represented that no additions have been made to the Trust since September 25, 1985.

The following rulings have been requested:

1. The proposed division of the Trust into six successor trusts will not subject either the Trust or the successor trusts to the generation-skipping transfer tax imposed under § 2601.

2. The appointment of new trustees to two of the successor trusts will not subject the two trusts to the generation-skipping transfer tax.

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

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the 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. 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) provides that if an addition is made after September 25, 1985, to an irrevocable trust that is otherwise exempted from the application of Chapter 13 (the GST tax) by § 1433(b)(2)(A) of the Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of Chapter 13.

A modification of a trust that is otherwise exempt for GST tax purposes under the Act will generally result in a loss of its "grandfathered" 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.

You have represented that the Trust was irrevocable on September 25, 1985, and that no additions have been made to the Trust after that date.

Based on the facts submitted and representations made, we conclude that the proposed partition 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 partition, as proposed, will not subject the Trust, or any trust created under the partition, to the generation-skipping transfer tax.

Furthermore, we conclude that the resignation of the current individual trustees of Granddaughter A's trust and Great grandchild E's trust, and the appointment by the court of a daughter of Granddaughter A and a third-party individual as the individual trustees of Granddaughter A's trust and the court appointment of the same third-party individual and Great grandchild E as the individual trustees of Great Grandchild E's trust relate to the administration of the trusts and follow the terms of the original trust for the replacement of individual trustees. Thus, we conclude that the appointment of new trustees will not subject the Trust, the successor Granddaughter A trust, or Great granddaughter E trust to the application of the generation-skipping transfer tax.

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal) before the transactions considered in the ruling take effect, the ruling will have no force or effect. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

Except as specifically ruled above, we express no opinion about the federal tax consequences of the transaction described above under any other provisions of the Code.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

This ruling letter 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,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

[signed] KATHERINE A. MELLODY

By _____
Katherine A. Mellody
Senior Technician Reviewer
Branch 4

Enclosure
Copy for section 6110 purposes