Internal Revenue Service

Department of the Treasury

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Re:

LEGEND:

Trust 1 =

Trust 2 =

Trust 3 =

a =

Decedent =

Daughter 1 =

b =

c =

d =

e =

f =

Daughter 2 =

Son =

Trust 4 =

Trust 5 =

g =

h =

Court =

i =

Dear Sir:

In a letter dated, , and a supplemental submission, dated , you requested rulings concerning the generation-skipping transfer (GST) tax consequences of the clarification of Trust 1, Trust 2, and Trust 3 (collectively, the Trusts). This letter responds to your request.

The information submitted and representations made are summarized as follows: On a, Decedent created Trust 1 for the benefit of Daughter 1. Trust 2 was created by Decedent for the benefit of Daughter 1 on b. Decedent died testate on c. Article

Sixth of Decedent's will, which was executed on d and modified by Codicil, dated e, established Trust 3.

The dispositive provisions of the Trusts are summarized as follows:

Trust 1:

Paragraph 4 of Trust 1 provides that the trustees are to pay to Daughter 1 that portion of the income as they deem proper until she becomes age f, or the trustees may invest the income. In the event that the income is invested it is not to be considered an addition to the principal, but is to be available for payments to Daughter 1, as the trustees may deem advisable. After Daughter 1 becomes age f, the trustees are to pay the income of Trust 1 at the intervals that they deem proper, not less, however, than semi-annually, to Daughter 1 during her lifetime. Should Daughter 1 die leaving lawful issue, the trustees are to continue to hold Trust 1 for f years after the death of Daughter 1, and are to pay the income to the child or children that she may leave surviving her, or their guardian, for their support and maintenance. f years after the death of Daughter 1, she having died leaving issue, the principal of Trust 1 is to be paid to the issue, share and share alike.

Paragraph 5 of Trust 1 provides that in the event Daughter 1 should die without issue, the income from Trust 1 is to be paid to Son and Daughter 2, during their lifetime, or should they, or either of them, die leaving issue, to the issue, share and share alike, and should either die without issue, then to the survivor of them. On the death of the survivor, the trustees are to continue to hold Trust 1 for a period of f years, and pay the income to the child or children that survive Son and Daughter 2, share and share alike, and not *per stirpes*. f years from the date of the death of the survivor of Son and Daughter 2, the trustees are to pay the principal of Trust 1 to the child or children of Son and Daughter 2, share and share alike, and not *per stirpes*. Should both Son and Daughter 2 die without children, then to the lawful heirs of either survivor of Son and Daughter 2.

Trust 2:

Paragraph 7 of Trust 2 gives the trustees the discretion to distribute the income from Trust 2 to Daughter 1 during her lifetime. On the death of Daughter 1, all properties and assets of Trust 2 are to be distributed to the lawful heirs of Daughter 1, share and share alike. If Daughter 1 dies without lawful issue, then all the properties and assets of Trust 2 are to be distributed to Trust 4 and Trust 5 in equal shares, this date set up by Decedent of the instant Trust. In the event that either Trust 4 or Trust 5 is distributed, then distribution of the instant Trust is to be to the remaining Trust 4 or Trust 5, as the case may be.

On distribution of Trust 4 and Trust 5, or to either of them, the properties and assets distributed from Trust 2 are to be added to the corpus of the other Trusts.

Trust 3:

Article Sixth (c)(1) of Decedent's will provides that the Children's Trust is to be divided into three shares, one share for each of Daughter 1, Daughter 2, and Son. The trustees are not required to make a physical segregation of the assets in order to effect the division of the Children's Trust into the three shares. Provided, however, that the share set aside for Son is to be paid out and distributed to him in full if he is alive at the time set for distribution of Decedent's estate by the executors to the trustees. If he is not then alive, his share is to continue in trust for the benefit of his children.

Article Sixth (c)(2) of Decedent's will provides that the trustees, in their sole discretion, are to pay over to, or use for the benefit of, each child so much of the income of each child's respective share as the trustees, in their sole discretion, deem advisable. The trustees may, in their further discretion, use the income from the parent's share for the direct benefit of the children of any child of Decedent and may pay over to the grandchildren all or part of the income from each share. In the event that Son is a co-trustee, he is to have no discretion nor any voice in the matter of the distribution of his share of the income to him or to his children.

Article Sixth (c)(3) of Decedent's will provides that in the event that any child of Decedent predeceases Decedent without issue surviving, then, his or her share of the Children's Trust is to be added to the share set aside for Decedent's surviving children or their children. In the event that any child of Decedent predeceases Decedent with children surviving, or survives Decedent but thereafter dies with children surviving, his or her share is to be held for the benefit of his or her surviving children. The trustees, in their sole discretion, are to pay over the income to, or use the income for the benefit of, the surviving children of Decedent's deceased child, in such amounts as the trustees in their sole discretion deem advisable. If the children of a deceased child all die prior to the distribution of their Trust share, the that share is to be added to the shares set aside for Decedent's surviving children and the share, if any, set aside for the children of any other deceased child of Decedent, *per stirpes* and not *per capita*.

Article Sixth (c)(4) of Decedent's will provides that on the death of each child of Decedent, his or her share of the trust estate is to continue in trust for the benefit of the surviving children of the deceased child until the youngest surviving child attains the age of f years at which time the trust share is to be paid over in equal amounts to the surviving child or children of Decedent's deceased child.

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Article Sixth (c)(5) of Decedent's will provides that in the event of emergency, such as sickness or other extreme need, the trustees may advance all or part of the principal of each child's share for the necessary care and support of the child, except that Son, if he is a co-trustee, is to have no discretion nor voice in the payment of principal to him.

Article (c)(6) of Decedent's will provides that in the event that all three of Decedent's children die without issue surviving or in the further event that no surviving children of any deceased child of Decedent survive to take the distribution of this trust estate at the distribution time set in the Trust instrument, then the trust is to terminate on the death of the last named or described beneficiary and is to be distributed and paid over to Decedent's heirs-at-law in accordance with the laws of descent and distribution of separate property for State governing the distribution of intestate estates. Decedent's heirs-at-law are to be determined as of the date of the death of the last surviving beneficiary.

In accordance with Article Sixth (c)(1), the Children's Trust was divided into equal shares for Decedent's children and each share has been administered as a separate trust. The trust share for the benefit of Daughter 1 remains in trust.

Daughter 1 has g children living, each of whom has g children, and one deceased child who had no surviving descendants.

It is represented that the use of the terms "issue" and "children" in Paragraphs 4 and 5 of Trust 1, Paragraph 7 of Trust 2, and Article Sixth (c)(4) of Decedent's will creates an ambiguity as to whom Decedent intended to receive beneficial interests in the Trusts. In addition, in is unclear whether adopted descendants of Decedent are entitled to participate as beneficiaries of the Trusts.

To resolve the ambiguity and uncertainty concerning the terms of the Trusts, on h, the trustees of the various shares filed petitions with the Court seeking a declaration of rights under the Trusts. On i, the Court ruled that the intent of Decedent was that the issue of Daughter 1 should share in her share on a *per stirpes* basis. Accordingly, during the 21-year period following the death of Daughter 1, the income from her share is to be distributed to her children in equal shares. If a child of Daughter 1 predeceases her or dies during the 21-year period following her death with descendants surviving, the deceased child's share of the income is to be distributed to the child's descendants by right of representation.

In addition, the Court ruled that persons legally adopted by the legal descendants of Daughter 1 are entitled to share in the Trusts as if they were descendants by birth.

It is represented that the Trusts were irrevocable on September 25, 1985, and that there have been no additions to them since that date.

You have requested a ruling that the Court's order declaring the rights of the beneficiaries of the Trusts will not cause the Trusts to become subject to the GST tax.

Section 2601 of the Internal Revenue Code 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 26.2611-1 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.

An amendment to an exempt trust that modifies or otherwise changes the quality, value, or timing of any of the powers, or beneficial interests, rights, or expectancies originally provided

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under the terms of the trust will cause the trust to lose its exemption from the GST tax.

We have examined the Court Orders declaring the rights of the beneficiaries of the Trusts the parties submitted in the context of relevant case law addressing the issues. We believe that the Court's declaration of the rights of the beneficiaries fairly reflects the relative merits of the positions of the respective parties.

Accordingly, based on the information submitted and the representations made, we conclude that the interests received by the parties under the Court's declaration of the rights of the beneficiaries, both with respect to the nature of the interests and their economic value, are consistent with the relative merit of the claims of the parties. Therefore, the Court Orders do not alter the intended quality, value, or timing of the interests Decedent created in the Trusts. Further, we conclude that the Court's declaration of the rights of the beneficiaries will not cause the Trusts, or any distributions from the Trusts, to be subject to the GST tax, provided no additions are made to the Trusts.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

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

Sincerely yours,

James C. Gibbons

James C. Gibbons
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Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

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