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Internal Revenue Service

Index No.: 2601.00-00

Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:7 - PLR-103386-99
Date: August 18, 1999

Re:

LEGEND:

Trust =

a =

Decedent =

Son =

b =

Daughter 1 =

Daughter 2 =

c =

Court =

d =

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Dear Sir:

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

The information submitted and representations made are summarized as follows: On a, Decedent created the Trust for the benefit of Son. Paragraph 4 of the Trust provides that the trustees are to pay to Son that portion of the income as they deem proper until he becomes b of age, or 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 Son, as the trustees may deem advisable. After Son becomes age b, the trustees are to pay the income of the Trust at the intervals that they deem proper, not less, however, than semi-annually, to Son during his lifetime. Should Son die leaving lawful issue, the trustees are to continue to hold the Trust for b years after the death of Son, and are to pay the income to the child or children that he may leave surviving him, or their guardian for their support and maintenance. b years after the death of Son, he having died leaving issue, the principal of the Trust is to be paid to the issue, share and share alike.

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

It is represented that the use of the terms "issue" and "children" in Paragraph 4 of the Trust creates an ambiguity as to whom Decedent intended to receive beneficial interests in the Trust. In addition, in is unclear whether adopted descendants of Decedent are entitled to participate as beneficiaries of the Trust.

To resolve the ambiguity and uncertainty concerning the terms of the Trust, on c, the trustees filed petitions with the Court seeking a declaration of rights under the Trust. On d, the Court ruled that the intent of Decedent was that Son's issue should share in the Trust on a *per stirpes* basis. Accordingly,

during the 21-year period following Son's death the income from the Trust is to be distributed to Son's children in equal shares. If a child of Son predeceases him or dies during the 21-year period following his 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 Son are entitled to share in the Trust as if they were descendants by birth.

It is represented that the Trust was irrevocable on September 25, 1985, and that there have been no additions to it since that date.

You have requested a ruling that the Court's order declaring the rights of the beneficiaries of the Trust will not cause the Trust 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 --

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(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 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 Trust 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 Order does not alter the intended quality, value, or timing of the interests Decedent created in the Trust. Further, we conclude that the Court's declaration of the rights of the beneficiaries will not cause the Trust, or any distributions from the Trust, to be subject to the GST tax, provided no additions are made to the Trust.

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
Assistant to the Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

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