

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

Telephone Number:

In Re:

Refer Reply To:
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Date: JUNE 29, 2005

LEGEND:

- Trust =
- Settlor =
- Wife =
- Son =
- Grandchild 1 =
- Grandchild 2 =
- Grandchild 3 =
- Date 1 =
- Date 2 =
- State Court =

- Company =
- State =
- State Statute 1 =
- a =

Dear :

This is in response to your December 30, 2004 letter and other correspondence requesting a ruling concerning generation-skipping transfer (GST) tax consequences of the proposed division of a trust.

You have requested the following ruling:

The proposed modification of Trust to close the class and divide Trust into four separate trusts will not cause either Trust or the newly formed trusts to lose their GST exempt status and distributions from the four new trusts will be exempt from the GST tax.

The facts submitted are as follows:

Settlor established Trust on Date 1. Paragraph 1.2 of Trust provides that the children and grandchildren of Settlor born during the term of Trust are to be the sole beneficiary of income and principal. Each member of the class is to participate equally in the trust.

Paragraph 1.3 provides that in the event that there are no members of the class described in paragraph 1.2 at the time of termination, then Wife is to succeed to the income and principal beneficial interest in Trust.

Paragraph 2.1 originally provided that unless previously terminated in accordance with paragraph 2.2, Trust is to continue for the maximum permissible term permitted by the State Trust Code. Paragraph 2.2 originally provided that Trust is to terminate any time Trust's existence would jeopardize Company's current status under the Bank Holding Company Act of 1956 as amended in 1970, and particularly as its existence might affect the exemption under 12 U.S.C. § 1843(c).

Pursuant to a State Court order on Date 2, Paragraphs 2.1 and 2.2 were modified. Paragraph 2.1 provides that except as provided in paragraph 2.2, Trust is to terminate 21 years after the death of Settlor or Son, whichever is the last to die. However, if both Settlor and Son are deceased, then upon each beneficiary's 25th birthday one-half of the beneficiary's interest in the Trust property will be distributed and the remainder will be distributed upon the beneficiary's 30th birthday. Paragraph 2.2 provides that, in the discretion of the trustee, Trust may be terminated at any time it is required to register as a bank holding company under the Bank Holding Company Act.

Paragraph 5.1 provides that trustee is to distribute or accumulate income as he sees fit. All accumulated income is to be distributed to the beneficiary's estate should the beneficiary perish during the term of the trust.

Paragraph 5.2 provides that the trustee may make distributions of principal from the trust to the income beneficiary in amounts sufficient to ameliorate his financial hardship due to medical emergencies, to provide him with the necessities of life and, to pay for the cost of education through four years of college or university study. Principal distributions to the beneficiary from the trust during a twelve month period are not to exceed \$a in value for the necessities of life. No invasion of principal is to be made to discharge Settlor's obligation, if any, to support the beneficiary.

Settlor did not reserve the right to modify or revoke Trust and, therefore, under State Statute 1, Trust is irrevocable. It is represented that no additions, actual or constructive, were made to Trust after September 25, 1985. Son, is the only son of Settlor. Son currently has three children, Grandchild 1, Grandchild 2, and Grandchild 3. Son and Grandchildren 1-3 are the current beneficiaries of Trust.

The trustee and the beneficiaries petitioned State Court to modify Trust. The beneficiaries propose to close the class of beneficiaries to the current beneficiaries of

Trust. Both Settlor and Son represent that they do not intend to have or adopt any more children. Further, once the class of beneficiaries is closed, the trustee and the beneficiaries propose to divide Trust into four separate trusts, one for each living beneficiary.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. The term “generation-skipping transfer” is defined in section 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under section 1433(a) of the Tax Reform Act of 1986 (Act) and section 26.2601-1(a) of the Generation-Skipping Transfer (GST) Tax Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under section 1433(b)(2)(A) of the Act and section 26.2601-1(b)(1)(i), the GST tax does not apply to a transfer under a trust 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). Under section 26.2601-1(b) will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in section 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 for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer. A modification that is administrative in nature that only indirectly increases the amount transferred will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST tax is divided into two trusts. Under the facts presented, the division of a trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the division, and the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Accordingly, the two partitioned trusts will not be subject to the provisions of chapter 13.

In this case, the proposed modification will not result in a shift of any beneficial interest in Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed modification will not extend the

time for vesting of any beneficial interest in the new trusts beyond the period provided for in Trust.

Accordingly, based on the facts submitted and representations made, we conclude that the proposed modification of Trust to close the class and divide Trust into four separate trusts will not cause either Trust or the newly formed trusts to lose their GST exempt status and distributions from the four new trusts will be exempt from the GST tax.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representative.

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.

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.

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 yours,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes