

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:7-PLR-117679-99
Date:
July 21, 2000

LEGEND:

a =

Decedent =

b =

Son 1 =

Son 2 =

Testamentary Trust =

Grandson 1 =

Grandson 2 =

Granddaughter =

c =

d =

Great-Grandson =

Great-Granddaughter =

e =

f =

Company =

g =

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h ≡

Court =

Trust A =

Trust B =

Trust C =

i =

Bank =

j =

k =

Dear Sir or Madam:

In a letter, dated _____, you requested a ruling concerning the generation-skipping transfer (GST) tax consequences of the partition and the modification and clarification of the administrative provisions of the Testamentary Trust, a grandfathered trust. This letter responds to your request.

The facts and representations submitted are summarized as follows: Decedent executed a will on a. Decedent died testate in b, survived by Son 1, Son 2, and the children of Son 1, Grandson 1, Grandson 2, and Granddaughter.

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Son 1 and Son 2 both died in c. Son 1 was survived by three children, Grandson 1, Grandson 2, and Granddaughter. Grandson 1 died in d, survived by Great-Grandson and Great-Granddaughter.

Item VI of Decedent's will established the Testamentary Trust for the benefit of Decedent's grandchildren and their descendants. The terms of the Testamentary Trust are summarized as follows:

Distribution of Income

The trustee is to pay the income from the Testamentary Trust semiannually or more often in its discretion as follows:

The income is to be divided into as many shares as there are Grandchildren of Decedent living at the time of the respective distribution and deceased Grandchildren of Decedent who left issue who are living. One share is to be paid to each then living Grandchild, and one share is to be paid *per stirpes* to the then living issue of each deceased Grandchild. If Decedent has no living Grandchild or issue of any deceased Grandchild, the income is to be paid in equal shares to Son 1 and Son 2, or the survivor of them. The trustees, however, insofar as retention is not forbidden by law, are to retain in the Testamentary Trust and accumulate any income that would otherwise be payable to any person under the age of e years, and insofar as retention is not forbidden by law, may retain and accumulate any income that otherwise would be payable to any person between the ages of e and f years, and the income so accumulated is to be added to and treated as part of the principal of the Testamentary Trust; provided, that the trustees in their discretion may pay such part of the income as may be necessary for his proper support and maintenance to any person to whom any income otherwise would be payable were it not for the accumulation; provided, further, that no payment is to be made to any income beneficiary under the age of f years toward whom any then individual trustee owes any legal duty of support except to the extent accumulation is forbidden by law and also to the extent that the individual trustee is unable to provide proper support and maintenance for the beneficiary.

Termination of Trust

The Testamentary Trust is to terminate on the death of the survivor of the following persons: (1) Son 1; (2) Son 2; and (3) those among Decedent's Grandchildren and issue of Decedent's Grandchildren who are living at the time of Decedent's death.

Distribution of Principal

On the final termination of the Testamentary Trust, the principal is to be divided into as many shares as there are then living Grandchildren of Decedent and deceased Grandchildren of Decedent who left issue who are then living, and one share is to be

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paid to each then living Grandchild, and one share is to be paid *per stirpes* to the then living issue of each deceased Grandchild. If there is no such person living, the principal is to be distributed as provided in Item VII of Decedent's will.

Successor to Corporate Trustee.

In the event of the merger, consolidation, or sale of substantially all of its assets by Company, to or with another bank or trust company authorized to carry on a trust business, the merged, consolidated, or purchasing company is to become the trustee.

A majority of the adults then entitled to receive income from the Testamentary Trust (or if only one, then that one) may at any time or times by instrument in writing delivered to the then corporate trustee, name a successor corporate trustee, and may change any designation of a successor corporate trustee previously made (prior to the time when the successor corporate trustee has become the corporate trustee hereunder); provided that the successor corporate trustee is to be a bank or trust company authorized to carry on a trust business in one or more states of the United States having a capital, surplus, and undivided profits of not less than g. If any adult renounces his or her right to name a successor corporate trustee, a majority of the remaining adults (or if only one, then that one) then entitled to receive income are to have the right provided in this paragraph to name a successor corporate trustee. In the event that the then corporate trustee resigns, is removed, or fails or ceases to serve for any reason, the successor corporate trustee named in the manner provided in this paragraph is to succeed to all the powers and duties of the original corporate trustee. The right to name or designate a successor to the corporate trustee is not to be construed as including the right to remove the corporate trustee or any successor corporate trustee.

Successor to Individual Trustee

Each of Decedent's Sons, whether he is a trustee or not, by instrument in writing, delivered to the then corporate trustee, may designate an individual to serve in his place as trustee or be his successor as individual trustee, and may revoke any designation previously made prior to the time the individual trustee has become trustee. If at any time after the death of both of Decedent's Sons, only one individual trustee is serving, no other individual is to be appointed to act as a co-trustee. If at any time after the death of both of Decedent's Sons, there is no individual trustee serving, a majority of the adults then entitled to receive income from the Testamentary Trust (or if only one, then that one), by instrument in writing delivered to the then corporate trustee, may name one individual successor trustee. If at any time, there is no individual trustee then serving, the corporate trustee or successor corporate trustee, as the case may be, is to serve as the sole trustee until a successor individual trustee is named as provided in Decedent's will. Any individual named as a successor trustee under this provision may, but need not be, a beneficiary of the Testamentary Trust. The right to name or

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designate a successor or substitute trustee is not to be construed as including the right to remove any individual trustee.

In f, the Court issued an order approving the final account and distribution of Decedent's estate. In the Order, the Court found that three separate trusts were created under Decedent's will: Trust A for the benefit of Grandson 1, Trust B for benefit of Grandson 2, and Trust C for the benefit of Granddaughter (collectively, the Separate Trusts). Since the initial funding of the Separate Trusts, they have been administered as three separate Trusts, each of which has its own taxpayer identification number and files its own fiduciary income tax return. Since the death of Grandson 1 in d, his children Great-Grandson and Great-Granddaughter have received the income from Trust A by representation.

Over the years the relationships among the income beneficiaries have deteriorated. Until i, the Trusts were administered by Bank. The income beneficiaries of the Trusts requested the resignation of Bank, but could not come to a majority agreement regarding the naming of a successor trustee as provided in the Testamentary Trust. Because, the Testamentary Trust does not authorize the income beneficiaries to name a different successor trustee for each trust, Bank petitioned the Court to give each income beneficiary the power to name a separate successor trustee for his or her separate trust. Bank also petitioned the Court to divide Trust A into Sub-Trusts for the benefit of Grandson and Granddaughter.

On j, the Court issued an order granting the trustee permission to divide Trust A into two Sub-Trusts, one for the benefit of Grandson (Grandson's Trust) and one for the benefit of Granddaughter (Granddaughter's Trust) (collectively the Sub-Trusts) subject to the income beneficiaries obtaining a ruling from the Internal Revenue Service that the Testamentary Trust will not lose its exemption from the GST tax. The Court order further authorizes and directs the trustee to allow the income beneficiary to appoint a separate successor trustee for his or her respective Trust. The Court order also authorizes and directs each successor trust, until the termination of the Trust, to administer each Sub-Trust by making current income distributions only to the income beneficiary or his or her respective living lineal descendants, *per stirpes*. Under the Court order, the issue of the terms by which the successor trustees are to distribute the remaining was set for hearing at a later date.

It is represented that following the Court Order, it became apparent that the terms for distributions prior to the Trust's termination needed clarification. All interested parties entered into Consent and Stipulation as to Terms Governing the Distribution of Trust Assets (Consent and Stipulation). The Court approved the Consent and Stipulation on k.

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Paragraph 1 of the Consent and Stipulation provides that each of the Separate Trusts and the Sub-Trusts will terminate at the same time on the death of the survivor between Grandson 2 and Granddaughter.

Paragraph 2 of the Consent and Stipulation provides that on the final termination, the assets of the Separate Trusts and the Sub-Trusts are to remain separated along the family lines of Decedent's grandchildren except as specifically provided in the Consent and Stipulation.

Paragraph 3 of the Consent and Stipulation provides that on the final termination, the balance of the assets in each Separate Trust is to be distributed *per stirpes* to the then-living descendants of the grandchild of Decedent for whose benefit the Separate Trust was created.

Paragraph 4 of the Consent and Stipulation provides that on the final termination, the balance of the assets in each Sub-Trust is to be distributed to the income beneficiary of the Sub-Trust. In the event that the income beneficiary is not then living, the balance of the assets is to be distributed to the deceased income beneficiary's then-living descendants *per stirpes*, or if none, the assets are to be distributed *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living descendants. In the event that a Sub-Trust has more than one income beneficiary, the balance of the assets in the Sub-Trust are to be distributed *per stirpes* to the then-living lineal descendants of the beneficiary for whose benefit the Sub-Trust was created.

Paragraph 5 of the Consent and Stipulation provides that on the final termination, in the event that a grandchild of Decedent has no living lineal descendants, the balance of the assets in that grandchild's Trust or any sub-trust created therefrom, as the case may be, is to be distributed to the then-living descendants of Decedent *per stirpes*.

Paragraph 6 of the Consent and Stipulation provides that in the event that no lineal descendants of Decedent are living on the final termination, all Testamentary Trust assets are to be distributed pursuant to the Item VII of the Testamentary Trust.

Paragraph 8 of the Consent and Stipulation provides that prior to the final termination, the trustee is to pay the income from a Separate Trust semiannually (or more often in its discretion) to the grandchild of Decedent for whom the Trust was created.

Paragraph 9 of the Consent and Stipulation provides that after the death of a grandchild of Decedent, the trustee is to pay the income from the Separate Trust semiannually (or more often in its discretion) to the lineal descendants of the grandchild

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who are living at the time of the respective distributions, *per stirpes*, subject to the “Distribution of Income” section of the Testamentary Trust directing the accumulation of income.

Notwithstanding the foregoing, if

- a. one or more of the descendants of a deceased grandchild request the trustee to divide the Separate Trust into sub-trusts for the descendants,
- b. the trustee in its discretion considers it advisable to make such a division, and
- c. the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its “grandfathered” exemption for the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the Separate Trust *per stirpes* among the then-living descendants of the deceased grandchild. Each share created for a descendant is to be held and administered as sub-trust for the benefit of that descendant.

Paragraph 10 of the Consent and Stipulation provides that in the event that, prior to final termination, any Separate Trust ceases to have a current income beneficiary (e.g., a Separate Trust’s sole beneficiary dies without then-living lineal descendants) the balance of the assets of the Separate Trust is to be divided *per stirpes* among the then-living lineal descendants of Decedent and the share of that descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 11 of the Consent and Stipulation provides that the trustee is to pay the income from a Sub-Trust semiannually (or more often in its discretion) to the descendant of Decedent for whom the Sub-Trust was created.

Paragraph 12 of the Consent and Stipulation provides that after the death of the descendant, the trustee is to pay the income from the Sub-Trust semiannually (or more often in its discretion) to the lineal descendants of the deceased descendant who are living at the time of the respective distributions, *per stirpes*, subject to the “Distribution of Income” section of the Testamentary Trust directing the accumulation of income.

Notwithstanding the foregoing, if

- a. one or more of the descendants of a deceased descendant request the trustee to divide the Sub-Trust into further sub-trusts for the descendants,

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- b. the trustee in its discretion considers it advisable to make such a division, and
- c. the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its "grandfathered" exemption for the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the Sub-Trust *per stirpes* among the then-living descendants of the deceased descendant. Each share created for a then-living descendant is to be held and administered as sub-trust for the benefit of the then-living descendant.

Paragraph 13 of the Consent and Stipulation provides that in the event that, prior to final termination, any Sub-Trust ceases to have a current income beneficiary (e.g. a Sub-Trust's sole income beneficiary dies without then-living lineal descendants) the balance of the assets of the Sub-Trust is to be divided *per stirpes* among the then-living descendants of beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living descendants, or if none, *per stirpes* among the then-living lineal descendants of Decedent. Each share created for a then-living descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 14 of the Consent and Stipulation provides that each Separate Trust and each Sub-Trust need not have the same trustee.

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

You have requested the following rulings:

1. The proposed partition of Trust A will not cause the resulting Sub-Trusts for the benefit of Grandson and Granddaughter to be subject to the GST tax.
2. The modification and clarification of the administrative provisions of the Testamentary Trust will not cause Trust A, Trust B, or Trust C 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

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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" to mean: (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 the transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

The Testamentary Trust is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Decedent's generation. Because, however, the Testamentary Trust was irrevocable on September 25, 1985, and there have been no additions (actual or constructive) to it since that date, it has been exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i). You have requested a ruling that the division of Trust A into Sub-Trusts for the benefit of Grandson and Granddaughter and the modification and clarification of the administrative provisions of the Testamentary Trust will not cause Trust A, Trust B, or Trust C to become subject to the GST tax.

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An amendment to a trust that 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, the interests of the income beneficiaries under the division of Trust A, will remain the same and the timing of the termination of the Sub-Trusts will remain the same. Consequently, the value of the income or corpus interest of each income beneficiary will not change materially as a result of the division of Trust A into two separately administered Sub-Trusts. Therefore, the division of Trust A into two Sub-Trusts will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the Testamentary Trust. Accordingly, we conclude that the division of Trust A into two Sub-Trusts will not cause distributions from the Sub-Trusts to be subject to GST tax imposed by chapter 13, provided that no additions are made to the Sub-Trusts after September 25, 1985.

In addition, we conclude that the modification and clarification of the Separate Trust and the Sub-Trusts relates to the administration of those 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. Accordingly, neither distributions from the Separate Trusts or the Sub-Trusts to skip persons nor terminations of interests of non-skip persons in the Separate Trusts or Sub-Trusts will be subject to the GST tax.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions 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,
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)