

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:9-PLR-119809-00
Date:
February 7, 2001

In Re:

Legend:

Child 1 =
Date 1 =
Date 2 =
Date 3 =
Decedent =
Trust =
Will =

Dear :

This is in response to your letter of October 2, 2000, and subsequent correspondence, in which you requested a ruling that the provisions of chapter 13 of the Internal Revenue Code ("Code") do not apply to any generation-skipping transfers made from the Trust because Decedent was under a mental disability within the meaning of section 26.2601-1(b)(3) of the Generation-Skipping Transfer Tax Regulations from October 22, 1986, until her death.

Decedent died on Date 1. The Fifth clause of Decedent's Will provides as follows:

FIFTH: All the residue and remainder of my estate, of whatsoever kind and wheresoever situate [sic], which I may own or be entitled to at the time of my death (all such property being herein sometimes referred to as my "residuary estate") I give and devise as follows:

A. If any issue of mine survive me, to my Trustee, IN TRUST, to divide the same into so many equal shares so that there shall be one such share set apart for each of my daughters who survive me and one such share set apart for the issue who survive me, taken collectively, of each of my daughters who does not survive me and I dispose of each such share as follows: . . .

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Decedent was survived by two children. Pursuant to the terms of the Fifth clause of the Will, the Trust was created for the benefit of Child 1 and an additional trust was created to benefit Child 1's sibling. The corpus of the Trust was included in the Decedent's gross estate.

The executors of Decedent's estate timely filed a federal estate tax return ("Form 706") on Date 2. In accordance with the requirements of section 26.2601-1(b)(3)(iii), the executors attached to Schedule R, Part 1, item 9A of the Form 706: (i) a statement to the effect that Decedent was under a mental disability to change the disposition of her property from October 22, 1986, until her death; and (ii) a certificate from Decedent's treating physician stating that Decedent was continuously, from early 1986 until her death, mentally incompetent to handle her own affairs, including the execution of a will. The Internal Revenue Service ("Service") issued an estate tax closing letter for Decedent's estate on Date 3.

The following rulings are requested:

1. The provisions of chapter 13 of the Code will not apply to any generation-skipping transfers from the Trust, because Decedent was under a mental disability to change the disposition of her property continuously from October 22, 1986, until her death.
2. The Service has agreed that Decedent was under such mental disability to change the disposition of her property continuously from October 22, 1986, until the date of her death.

Section 2601 of the Code imposes a tax on every generation-skipping transfer made after October 22, 1986.

Under section 1431(a) of the Tax Reform Act of 1986 ("Act"), the generation-skipping transfer tax generally applies to any generation-skipping transfer made after October 22, 1986, the date the statute was enacted. However, under section 1433(b)(2)(C) of the Act, the tax does not apply to any generation-skipping transfer: (i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act), or reinvestments thereof, or (ii) which is a direct skip which occurs by reason of the death of any decedent; but only if such decedent was, on the date of the enactment of this Act [October 22, 1986], under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

Section 26.2601-1(b)(3)(i) of the Generation-Skipping Transfer Tax Regulations provides that if an individual was under a mental disability to change the disposition of

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his or her property continuously from October 22, 1986, until the date of his or her death, the provisions of chapter 13 do not apply to any generation-skipping transfer: (A) Under a trust (as described in section 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during the individual's life after October 22, 1986); or (B) Which is a direct skip (other than a direct skip from a trust) that occurs by reason of the death of the individual.

Section 26.2601-1(b)(3)(ii) provides that for purposes of section 26.2601(b)(2), the term "mental disability" means mental incompetence to execute an instrument governing the disposition of the individual's property, whether or not there was an adjudication of incompetence and regardless of whether there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the individual or care of the individual's property.

Section 26.2601-1(b)(3)(iii)(A) provides that, if there has not been a court adjudication that the decedent was mentally incompetent on or before October 22, 1986, the executor must file, with Form 706, either - (1) a certification from a qualified physician stating that the decedent was - (i) mentally incompetent at all times on and after October 22, 1986; and (ii) did not regain competence to modify or revoke the terms of the trust or will prior to his or her death; or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician; and (3) any judgement or decree relating to the decedent's incompetency that was made after October 22, 1986. Section 26.2601-1(b)(3)(iii)(B) provides that the items in paragraphs (b)(3)(iii)(A), (1), (2), and (3) of this section will be considered relevant, but not determinative, in establishing the decedent's state of competency.

According to the facts as represented, the corpus of the Trust consists of property that was included in Decedent's gross estate and the Decedent's Form 706 contained the physician's certification regarding the Decedent's mental disability as required by section 26.2601-1(b)(3)(iii). The Service audited the Form 706 and issued an estate tax closing letter on Date 3. Because the required physician's statement was filed with the Form 706 on Date 2 and the Service issued an estate tax closing letter on Date 3, the Service has accepted that the Decedent was under a mental disability to change the disposition of her property continuously from October 22, 1986, until the date of her death. Because Decedent was under a mental disability to change the disposition of her property continuously from October 22, 1986, until her death, the provisions of chapter 13 of the Code will not apply to any generation-skipping transfers from the Trust established by the Fifth clause of Decedent's Will.

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

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this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the trustees of the Trust.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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.

Sincerely,
Melissa Liquerman
Acting Branch Chief, Branch 9
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes