

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-121507-01

Date:

August 30, 2001

Re:

Legend:

Settlor 1	=
Settlor 2	=
Beneficiary 1	=
Trust 1	=
Trust 2	=
Date 1	=
Trustee	=
State	=

Dear :

This is in response to your letter of February 23, 2001, in which you request a ruling on the application of the generation-skipping transfer (GST) tax provisions of Chapter 13 of the Internal Revenue Code to the proposed modification of Trust 1 and Trust 2.

On Date 1, Settlor 1 and Settlor 2, who were sisters, created identical irrevocable inter vivos trusts. Trust 1 was created by Settlor 1 and Trust 2 was created by Settlor 2. Trust 1 and Trust 2 provide that during the life of the respective Settlor, Trustee is to pay all of the net income to a charitable trust. After the death of the respective Settlor, Trustee is to pay the net income of Trust 1 and Trust 2 to eight named nieces and nephews of Settlor 1 and Settlor 2 in equal shares. If any of the named nieces and nephews die leaving lawful issue, the issue are to take, per stirpes, the net income which a deceased niece or nephew would have been entitled to receive if living. In the

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event that any niece or nephew shall die leaving no lawful issue, Trustee will pay that share of net income to the surviving named nieces and nephews and the lawful surviving issue, if any, of any named deceased niece or nephew, said issue to take per stirpes.

Trust 1 and Trust 2 will terminate twenty years after the death of the last survivor of the named nieces and nephews. All assets of the trust estate will be distributed outright to the persons entitled to the income at the time the trusts terminate, in the same proportions that the persons are entitled to the income immediately prior to termination. If there are no surviving issue of the named nieces and nephews, the property is to be distributed to the Settlor's heirs at law under the laws of descent of State.

Of the eight named beneficiaries, only one is currently living. Of the seven deceased beneficiaries, one died without surviving descendants, six other named beneficiaries died and are survived by second, third, and fourth generation descendants. At the request of the descendants of Beneficiary 1, the Trustee proposes to segregate one-seventh of the assets in Trust 1 and establish a separate account to be administered for the benefit of the descendant's of Beneficiary 1. Trustee also proposes to segregate one-seventh of the assets in Trust 2 and establish a separate account to be administered for the benefit of the descendant's of Beneficiary 1. These separate accounts will be administered in accordance with the terms of Trust 1 and Trust 2 respectively, except that only descendants of Beneficiary 1 will receive income from the accounts and on termination of the trusts, the corpus held in the segregated accounts will be paid to the descendant's of Beneficiary 1 as provided in the trust instruments. In all other respects the segregated accounts will be administered as provided under the terms of Trust 1 and Trust 2.

It is represented that Trusts were created and irrevocable before September 25, 1985 and that no additions have been made to Trusts since September 25, 1985.

You have requested a ruling that the partition of one-seventh of the assets of Trust 1 and Trust 2 into a segregated account will not result in the imposition of the GST tax.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 1433(b)(2)(A) of the 1986 Act and § 26.2601-1(b)(1)(i) of the generation-skipping transfer tax regulations provide that the generation-skipping transfer tax shall not apply to any generation-skipping 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).

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Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(1)(ii) (B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust, which is excluded from the application of Chapter 13 by § 1433(b)(2)(A) of the 1986 Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of Chapter 13.

Section 26.2601-1(b)(4)(i) provides rules for determining under what circumstances judicial actions, settlements, trustee actions and trust modifications will not cause a trust created before September 25, 1985, to lose exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause the trust to be subject to the provisions of chapter 13, if –

(1) The modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modifications, and

(2) 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.

In this case, Trust 1 and Trust 2 were created and irrevocable before September 25, 1985. Also, it is represented that no additions have been made to Trust since September 25, 1985. Consequently, Trust 1 and Trust 2 are currently exempt from GST tax.

The proposed segregation of a one-seventh share of Trust 1 and Trust 2 into separate accounts as discussed above will not shift any beneficial interest in Trust 1 or Trust 2 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.

In addition, the proposed segregation will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trust. Accordingly, based on the facts submitted and the representations made, the separate accounts resulting from the segregation of one-seventh of the assets of Trust 1 and Trust 2 will not be subject to the provisions of chapter 13.

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

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

Sincerely yours,

George Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for 6110 purposes