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Person To Contact:
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Telephone Number:

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Date:
January 17, 2008

Date 1	=
Decedent	=
Trust	=
Date 2	=
State	=
Spouse	=
Daughter 1	=
Daughter 2	=
Daughter 3	=
Marital Trust One	=
Family Trust	=
Marital Trust Two	=
Trustee	=
Date 3	=
a	=
b	=
c	=
d	=
Date 4	=
Date 5	=
Executor	=
Date 6	=
e	=
f	=
g	=
State Statute 1	=
State Statute 2	=

This responds to your representative's letter dated February 6, 2007, requesting rulings under the applicable provisions of the Internal Revenue Code.

FACTS

The facts and representations submitted are summarized as follows. On Date 1, Decedent created Trust, a revocable trust. On Date 2, Decedent died, a resident of State, whereupon Trust became irrevocable. Decedent was survived by Spouse, Daughter 1, Daughter 2, Daughter 3, and grandchildren.

Trust provides that after the death of Decedent, the trustee shall divide the trust estate into three trusts: Marital Trust One, to consist of certain real and personal property; Family Trust, to consist of the smallest amount necessary to reduce to zero the federal estate tax payable as a result of the death of Decedent (after taking into account the state death tax credit); and, Marital Trust Two, to consist of the balance of the trust estate.

Article 3, Sections 1-5 of Trust contains the provisions of Marital Trust One relating to the distribution of income and principal to Spouse during Spouse's lifetime. Article 3, Section 6 provides that on the death of Spouse, the assets of Marital Trust One shall be added to or used to fund Family Trust.

Article 4, Section 1 of Trust contains the provisions of Family Trust relating to the distribution of income to Spouse during Spouse's lifetime. Article 4, Section 2 provides that upon the death of Spouse, the trustee shall distribute the assets of Family Trust, including any amounts added thereto from Marital Trust One and Marital Trust Two, to such of Decedent's daughters as shall then be living, except that the then living descendants of a deceased daughter shall take per stirpes the share that the daughter would have received if living. Each distribution is subject to the postponement of possession until such beneficiary attains the age of 35.

Article 5, Sections 1-2 of Trust contains the provisions of Marital Trust Two relating to the distribution of income and principal to Spouse during Spouse's lifetime. Article 5, Section 3 provides that on the death of Spouse, the assets of Marital Trust Two shall be added to or used to fund Family Trust, except to the extent the amount of estate and inheritance taxes is increased as a result of the inclusion of the assets of Marital Trust One and Marital Trust Two in Spouse's estate.

Article 7 of Trust provides that the law of State governs the validity and interpretation of Trust.

Trustee currently serves as the trustee of Marital Trust One, Family Trust, and Marital Trust Two.

It is represented that all of Decedent's generation-skipping transfer (GST) tax exemption was available for allocation at her death. Form 706, the United States Estate (and Generation-Skipping Transfer) Tax Return, was timely filed (with extensions) on behalf of Decedent's estate on Date 3. Form 706 reflects that Marital Trust One was funded with a total of $a in assets, Marital Trust Two was funded with a total of $b in assets, and Family Trust was funded with a total of $c in assets. An election was made on Schedule M of Decedent's Form 706 to treat the property of Marital Trust One and Marital Trust Two as qualified terminal interest property (QTIP) under § 2056(b)(7) of the Internal Revenue Code ("Code"). A reverse QTIP election under § 2652(a)(3) of the Code was made with respect to the property of Marital Trust Two. The executor of Decedent's estate allocated $c of Decedent's GST tax exemption available under § 2632(c) (in effect at the time of the transfer) to Family Trust and $d of Decedent's GST exemption to Marital Trust Two.

On Date 4, Daughter 1, Daughter 2, and Daughter 3, disclaimed all of their interests in that portion of Family Trust (including that portion of Marital Trust One and Marital Trust Two that may ultimately be added to Family Trust) that would not result in any GST tax due to any allocation of GST exemption by Decedent and Spouse. It is represented that all of the disclaimers are irrevocable and that the disclaimers were in a written instrument delivered to Trustee of Family Trust within 9 months of Decedent's death. It is also represented that none of the disclaimants have accepted or will accept any of the interests or benefits of the disclaimed interest.

Spouse died on Date 5, a resident of State. Executor currently serves as the executor of Spouse's estate. Executor is neither a beneficiary nor a party related to a beneficiary of Marital Trust One, Marital Trust Two, or Family Trust. Executor timely filed (with extensions) Spouse's Form 706 on Date 6. Spouse's Form 706 reflected the inclusion in Spouse's gross estate of the assets of Marital Trust One, valued at $e, and Marital Trust Two, valued at $f. Executor of Spouse's estate allocated Spouse's available GST exemption, in the amount of $g, to the assets of Marital Trust One.

Trustee now seeks to sever Marital Trust One into GST Exempt Marital Trust One and GST Nonexempt Marital Trust One. It is represented that, upon severance, GST Exempt Marital Trust One and GST Nonexempt Marital Trust One will be governed in accordance with the provisions governing Marital Trust One. It is further represented that Marital Trust One will be severed on a fractional basis. GST Exempt Marital Trust One will be funded with a fraction of the original trust, with the numerator equal to Spouse's unused GST exemption and the denominator equal to the fair market value of the assets of Marital Trust One on the date of severance. GST Nonexempt Marital Trust One will be funded with a fraction of the original trust equal to one minus the fraction determined for GST Exempt Marital Trust One.

It is further represented that GST Exempt Marital Trust One and GST Nonexempt Marital Trust One will be funded with the appropriate pro rata portion of each asset held by Marital Trust One; or, if funded on a non pro rata basis, each trust will be funded by applying the appropriate fraction or percentage to the total fair market value of the assets of Marital Trust One as of the date of severance.

You have requested the following rulings:

1. After the severance of Marital Trust One, GST Exempt Marital Trust One and GST Nonexempt Marital Trust Two will be recognized as separate trusts for GST tax purposes, the former having an inclusion ratio of zero and the latter having an inclusion ratio of one.
2. The disclaimers executed by Daughter 1, Daughter 2, and Daughter 3 will be considered qualified disclaimers under § 2518(b).
3. The distribution of the assets of GST Exempt Marital Trust One will not result in a transfer subject to gift tax under § 2501.

Ruling Request 1

Section 2001(a) of the Internal Revenue Code imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(b)(1) provides, in pertinent part, that no deduction shall be allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of such property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life; and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001, and that such an election, once made, shall be irrevocable.

Section 2044 provides, in relevant part, that the value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7).

Section 2044(c) provides that for purposes of chapter 11 and chapter 13, property includible in the gross estate of the decedent under § 2044(a) shall be treated as property passing from the decedent.

Section 2601 imposes a tax on every GST. Under § 1433(a) of the Tax Reform Act of 1986 (Act), the GST tax is generally applicable to GSTs made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to any GST from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date.

Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of $1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2652(a)(1) provides that for purposes of chapter 13 the term "transferor" means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of § 2056(b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST purposes as if the election to be treated as qualified terminable interest property had not been made. This election is referred to as a "reverse" QTIP election, and, as provided in § 26.2652-2(b), is made on the return on which the QTIP election was made.

Section 2654(b)(1) provides that, for GST tax purposes, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts.

Section 2642(a)(3)(A) provides that if a trust is severed in a qualified severance, the trusts resulting from the severance shall be treated as separate trusts thereafter for GST purposes.

Section 2642(a)(3)(B)(i) defines "qualified severance" as the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if: (I) the single trust was divided on a fractional basis; and (II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

Section 2642(a)(3)(B)(ii) provides that if a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In this case, the trust receiving the fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of one.

Section 2642(a)(3)(B)(ii) provides that the term "qualified severance" includes any other severance permitted under regulations prescribed by the Secretary.
Section 2642(a)(3)(C) provides that a severance provided for in § 2642(a)(3) may be made at any time.

Section 26.2642-6(d) of the Generation-Skipping Transfer Tax regulations provides, in relevant part, that a qualified severance must satisfy each of the following requirements:

(1) The single trust must be severed pursuant to the terms of the governing instrument or pursuant to applicable local law.

(2) The severance must be effective under local law.

(3) The date of severance must be either the date selected by the trustee or the court-imposed date of funding in the case of an order of the local court with jurisdiction over the trust ordering the trustee to fund the resulting trusts on or as of a specific date. For a date to satisfy the definition in the preceding sentence, however, the funding must be commenced immediately upon, and funding must occur within a reasonable time (but in no event more than 90 days) after, the selected valuation date.

(4) The single trust is severed on a fractional basis such that each new trust is funded with a fraction or percentage of the original trust, and the sum of those fractions or percentages is one or one hundred percent, respectively. The severance of a trust based on a pecuniary amount does not satisfy this requirement. With respect to the particular assets to be distributed to each resulting trust, each resulting trust may be funded with the appropriate fraction or percentage (pro rata portion) of each asset held by the original trust. Alternatively, the assets may be divided among the resulting trusts on a non pro rata basis, based on the fair market value of the assets on the date of severance. However, if funded on a non pro rata basis, each resulting trust must be funded by applying the appropriate fraction or percentage to the total fair market value of the trust assets as of the date of severance.

(5) The terms of the resulting trusts must provide, in the aggregate, for the same succession of interests of beneficiaries as are provided in the original trust. This requirement is satisfied if the beneficiaries of the separate resulting trusts and the interests of the beneficiaries with respect to the separate trusts, when the separate trusts are viewed collectively, are the same as the beneficiaries and their respective beneficial interests with respect to the original trust before severance.

(6) In the case of a qualified severance of a trust with an inclusion ratio as defined in § 26.2642-1 of either one or zero, each trust resulting from the severance will have an inclusion ratio equal to the inclusion ratio of the original trust.

(7) In the case of a qualified severance occurring after GST tax exemption has been allocated to the trust, if the trust has an inclusion ratio as defined in § 26.2642-1 that is greater than zero and less than one, then the trust must be severed initially into two trusts. One resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction, as defined in § 26.2642-1(b) and (c), used to determine the inclusion ratio of the original trust immediately before the severance. The other resulting trust must receive that fractional

> share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the preceding sentence. The trust receiving the fractional share equal to the applicable fraction shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of one.

Section 26.2642-6(f)(1) provides that a qualified severance may occur at any time prior to the termination of the trust. Thus, provided that the separate resulting trusts continue in existence after the severance, a qualified severance may occur either before or after GST tax exemption has been allocated to the trust, a taxable event has occurred with respect to the trust, or an addition has been made to the trust.

Section 2654(b)(1) provides that for GST tax purposes the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts.

State Statute 1 provides, in relevant part, that a trustee has the power to sever any trust on a fractional basis into two or more separate and identical trusts for any reason unless expressly provided to the contrary in the trust instrument. Each separate trust must be held and administered upon the identical terms and conditions of the trust from which it was severed. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective.

In the instant case, as a result of the QTIP election made on Decedent's Form 706 with respect to Marital Trust One, the property of Marital Trust One is includible in Spouse's gross estate pursuant to § 2044. Spouse, accordingly, will be considered the transferor of the assets of Marital Trust One for GST tax purposes. With respect to the assets of Family Trust, the property of Family Trust was includible in Decedent's gross estate and Decedent is considered the transferor with respect to the assets of Family Trust for GST tax purposes. With respect to the assets of Marital Trust Two, as a result of the QTIP election and the reverse QTIP election, the property of Marital Trust Two is includible in Spouse's gross estate pursuant to § 2044, but Decedent is considered the transferor for GST tax purposes.

As provided above, Trust provides that upon the death of Spouse, the assets of Marital Trust One and Marital Trust Two are to be added to Family Trust. However, Marital Trust One is treated as a separate trust from Family Trust for GST tax purposes because Marital Trust One has a different transferor than Family Trust. On Spouse's Form 706, $g of Spouse's GST tax exemption was allocated to the assets of Marital Trust One, causing Marital Trust One to have an inclusion ratio between one and zero. Trustee proposes to sever Marital Trust One into two trusts, GST Exempt Marital Trust One having an inclusion ratio of zero and GST Nonexempt Marital Trust One having an inclusion ratio of one. State Statute 1 authorizes a trustee to sever any trust on a fractional basis into two or more separate and identical trusts for any reason, provided each separate trust is held and administered upon the identical terms and conditions of

the trust from which it was severed. Trustee represents that Marital Trust One will be severed on a fractional basis, with GST Exempt Marital Trust One receiving that fractional share equal to the applicable fraction and GST Nonexempt Marital Trust One receiving that fractional share equal to one minus the applicable fraction. The provisions of GST Exempt Marital Trust One and GST Nonexempt Marital Trust One will provide for the same succession of interests of beneficiaries as is provided prior to severance.

Provided the severance is effective under local law and the funding of the severed trusts occurs within a reasonable time after the date of severance as selected by Trustee, we rule that the severance of Marital Trust One into GST Exempt Marital Trust One and GST Nonexempt Marital Trust One will be a qualified severance under § 2642(a)(3). When GST Exempt Marital Trust One receives a fractional share of the assets of Marital Trust One equal to the applicable fraction, as defined in § 26.2642-1(b) and (c), used to determine the inclusion ratio immediately before the severance, GST Exempt Marital Trust One will have an inclusion ratio of zero and GST Nonexempt Marital Trust One will have an inclusion ratio of one.

The severance should be reported by filing Form 706-GS(T), "Generation-Skipping Transfer Tax Return for Terminations." The form should have "Qualified Severance" written at the top of the form and a Notice of Qualified Severance (Notice) should be attached to the return. The return and attached Notice should be filed by April 15th of the year immediately following the year during which the severance occurred or by the last day of the period covered by an extension of time, if an extension of time is granted, to file the form. The Notice should contain with respect to the original trust the name of the transferor, the name and date of creation of the original trust, the tax identification number of the original trust, and the inclusion ratio before the severance. The Notice should contain with respect to each of the resulting trusts created by the severance, the name and tax identification number of the trust, the date of severance, the fraction of the total assets of the original trust received by the resulting trust, other details explaining the basis for the funding of the resulting trust, and the inclusion ratio.

Ruling Request 2 and 3

Section 2501 imposes a tax on the transfer of property by gift by an individual.

Section 2511 provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax applies to gifts indirectly made. Any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax. However, in the case of a transfer creating an interest

in property made after December 31, 1976, § 25.2511-1(c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee, a completed transfer of an interest in property is not effected.

Section 2518 sets forth the requirements that must be met for a disclaimer to be treated as a qualified disclaimer for federal gift tax purposes. Section 2518(a) provides that if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate, gift, and generation-skipping transfer taxes, the interest will be treated as if it had never been transferred to the disclaimant. Section 2518(b) defines the term "qualified disclaimer" to mean an irrevocable and unqualified refusal by a person to accept an interest in property but only if:

(1) such refusal is in writing;

(2) such writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of the date on which the transfer creating the interest in such person is made, or the day on which such person attains age 21;

(3) such person has not accepted the interest or any of its benefits; and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either to the spouse of the decedent, or to a person other than the person making the disclaimer.

Section 25.2518-1(b) provides, in part, that if a person makes a qualified disclaimer, then, for purposes of federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift.

Section 25.2518-2(c)(3)(i) provides, in part, that in the case of a remainder interest in property that an executor elects to treat as qualified terminable interest property under § 2056(b)(7), the remainderman must disclaim within 9 months of the transfer creating the interest, rather than 9 months from the date such interest is subject to tax under § 2044 or 2519.

Section 25.2518-3(b) provides that a disclaimer of an undivided portion of a separate interest in property that meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided

portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted.

Section 25.2518-3(d), Example 20, provides that A bequeathed his residuary estate to B. B disclaims a fractional share of the residuary estate. Any disclaimed property will pass to A's surviving spouse, W. The numerator of the fraction disclaimed is the smallest amount that will allow A's estate to pass free of federal estate tax and the denominator is the value of the residuary estate. B's disclaimer is a qualified disclaimer.

State Statute 2 provides, in part, that a beneficiary may disclaim his succession to any interest in property that, unless disclaimed, would pass to the beneficiary as beneficiary of a testamentary trust. To be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person making the disclaimer. A disclaimer with respect to an interest in a testamentary trust must be delivered to the trustee within nine months after the event giving rise to the right to disclaim. Unless otherwise provided in the instrument creating the disclaimed interest, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created.

In this case, based upon the representations made and the information submitted, we conclude that the four requirements under § 2518(b) are satisfied. The first requirement is satisfied because the disclaimers are in writing. The second requirement is satisfied because the disclaimers were delivered to the trustee of Family Trust not later than nine months after the death of Decedent, which was the transfer creating the interest to be disclaimed. The third requirement is satisfied because Daughter 1, Daughter 2, and Daughter 3 have represented that they have not and will not accept any of the disclaimed interests or benefits. The fourth requirement is satisfied because under State law, the disclaimed property will pass to recipients other than Daughter 1, Daughter 2, and Daughter 3 and will not pass to any recipient at the direction of Daughter 1, Daughter 2, or Daughter 3.

Accordingly, assuming the disclaimers are effective under State law, we conclude that each of the disclaimers by Daughter 1, Daughter 2, and Daughter 3 will be considered qualified disclaimers under § 2518. As a result of the disclaimers by Daughter 1, Daughter 2, and Daughter 3, the assets of GST Exempt Marital Trust One will be distributable to the grandchildren of Decedent. Pursuant to §§ 25.2511-1(c)(1) and 25.2518-1(b), we further conclude that the distribution of the assets of GST Exempt Marital Trust One will not result in a transfer subject to gift tax.

This ruling is directed only to the taxpayer 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 your authorized representative.

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.

Sincerely,

James F. Hogan
Senior Technician Reviewer (Branch 4)
Passthroughs & Special Industries