

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-127091-07

Date:  
September 29, 2008

Re:

Husband =  
Wife =  
Trust =  
Date =  
Grandson =  
Corporate Trustee =  
Trustee 1 =  
Trustee 2 =  
State Trust Code =  
Section 1 =  
Section 2 =  
State Case =

X =  
Year =  
Financial Services =  
Corporation =  
LLC =  
Partnership =

Dear :

This responds to your letter dated June 16, 2008, and prior correspondence, submitted on your behalf by your authorized representative, concerning the gift and generation-skipping transfer tax consequences of the distribution of trust assets to a partnership in exchange for a partnership interest.

## FACTS

The facts and representations submitted are as follows.

Husband and Wife created Trust, an irrevocable trust, on Date (a date prior to September 25, 1985) for the benefit of Grandson. Grandson is currently over the age of twenty-one and has two children. The current trustees of Trust are Corporate Trustee, a corporate bank, and Trustees 1 and 2. It is represented that Trustees 1 and 2 are individuals not related or subordinate to any beneficiary of Trust.

The relevant provisions of Trust are as follows.

After Grandson attains the age of twenty-one, the trustees are to distribute to Grandson either \$x or the net income from the trust, whichever is greater. The trustees may also distribute so much principal as the trustees may deem necessary or desirable for the proper support, education, medical care, comfortable maintenance, and general welfare of Grandson, in the trustees' sole discretion.

The trust is to terminate at the death of Grandson. At that time, the remaining corpus of the trust is to be distributed to Grandson's issue per stirpes. If Grandson leaves no surviving issue, the terms of the trust grant to Grandson, through his will, a special power to appoint the remaining trust corpus to anyone except Grandson, his creditors, his estate, the creditors of his estate, Husband and Wife, their creditors, their estates, or the creditors of their estates.

The trustees shall hold, manage, invest and reinvest the trust property and shall collect and receive the income from the trust property. The trustees' powers shall be exercised in a fiduciary capacity primarily in the interest of the beneficiaries, in the sole and absolute discretion of the trustees without application to or approval by any court. In addition, the trust instrument confers broad trustee powers, including any power, authority, and discretion granted by law under the State Trust Code as it now exists and as it may be amended in the future.

Section 1 of State Trust Code provides that a trustee may manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper. Section 2 of State Trust Code provides that a trustee may exercise any powers in addition to the powers authorized by the relevant subchapter of the State Trust Code that are necessary or appropriate to carry out the purposes of the trust. As affirmed in State Case, the effect of State Trust Code is to give trustees broad general powers, limited only by the trust instrument, a court order, or provisions of the State Trust Code.

In addition to being the sole current beneficiary of Trust, Grandson is the sole beneficiary of a number of other trusts (the "Grandson's Trusts"). In Year, the trustees

of the Grandson's Trusts placed the marketable securities held in each respective trust in a custodian account with Financial Services Corporation (hereinafter, "FSC"). As the custodian of the assets, FSC is able to provide online daily access to account information and integrated reporting of asset performance individually for each trust and in the aggregate for all of the Grandson's Trusts. A registered investment advisor with FSC provides financial consulting and assists with asset management for the Grandson's Trusts. It is represented that the integrated reporting provided by FSC is intended to allow for better economies of scale, more detailed review, more accurate analysis, and improved financial consulting with respect to each individual trust and in the aggregate for all of the Grandson's Trusts.

It is represented that the trustees of Trust desire to include Trust's marketable securities in the integrated reporting provided by FSC in order to achieve the aforementioned benefits associated with integrated reporting. However, legal counsel for Corporate Trustee advised the trustee that regulations promulgated by the Office of the Comptroller of Currency ("Comptroller") require the trustee to maintain custody of all Trust assets. Corporate Trustee informed the other trustees that the internal policies of Corporate Trustee require that Corporate Trustee maintain custody of all Trust assets while serving as a trustee. Therefore, in order to allow Trust investments to be evaluated in the FSC system and to ensure that the trustees of Trust comply with the Comptroller's regulations and the Corporate Trustee's internal policies, the trustees of Trust carried out the following transactions in Year. Trust formed a wholly-owned limited liability company ("LLC"). Trust contributed its marketable securities and investments to Partnership, a newly-formed limited partnership, in exchange for a 99.9% limited partner interest. LLC owns a 0.1% general partner interest in Partnership. Partnership placed its assets in a custody account with FSC.

It is represented that the trustees of Trust, through their control of Partnership, by Trust's ownership of LLC, which is a general partner of Partnership, remain in control of the management of the investments of Trust and in control of all other aspects of the operation of Trust.

It is represented that the Partnership Agreement and the LLC Agreement will be amended to require Partnership to distribute: (1) the "net cash from operations" and (2) amounts sufficient to allow any partner that is a trust to make any distributions required by the applicable trust instrument of such trust. It is represented that "net cash from operations" is equivalent to the amount that would be "net income" under State Trust Code if Partnership's assets were owned by Trust. It is represented that the amount required to be distributed under the amended Partnership Agreement and the LLC Agreement is equivalent to the amount required to be distributed under Trust. It is represented that since the creation of Partnership, Partnership has distributed to Trust all such amounts.

It is further represented that no additions have been made to the corpus of Trust since September 25, 1985.

You request the following rulings:

1. The operation and management of Trust's assets, pursuant to the Partnership Agreement, LLC Agreement, and State Trust Code, does not result in a modification of or an addition to Trust that will cause Trust or any beneficiary of Trust to be subject to chapter 13 of the Code.
2. The operation and management of Trust's assets, pursuant to the Partnership Agreement, LLC Agreement, and State Trust Code, will not cause Trust to lose its exempt status under chapter 13 of the Code.
3. The operation and management of Trust's assets, pursuant to the Partnership Agreement, LLC Agreement, and State Trust Code, will not cause Grandson to be treated as making a taxable gift for purposes of § 2501.

## LAW AND ANALYSIS

### RULINGS 1 and 2

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer (GST).

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the GST tax shall not apply to any GST 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).

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 chapter 13 by reason of § 26.2601-1(b)(1), 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) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is

exempt from the GST tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraphs (b)(4)(i)(A), (B), or (C) of this subsection) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13 if 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 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.

In this case, Trust was irrevocable on September 25, 1985, and it is represented that no additions were made to Trust after that date.

The transactions carried out by the trustees with respect to the creation of the LLC and Partnership are within the authority granted to them under Trust and State Trust Code. In addition, under the Partnership and LLC Agreements, Partnership is required to distribute to Trust, at least annually, the “net cash from operations” as well as any amounts sufficient to allow a partner that is a trust to make any distributions required by the applicable trust instrument of such trust; thus, the required distribution is equivalent to the amount required to be distributed under Trust. No other modifications are proposed. The termination date of Trust will not change and, accordingly, on Grandson’s death, the assets of Trust will be distributed as provided under Trust. Accordingly, we conclude that the operation and management of Trust assets, pursuant to the Partnership and LLC Agreements and State Trust Code, 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 prior to the distribution and will not extend the time for vesting of any beneficial interest in Trust beyond the period provided for in Trust. Under these circumstances, based on the facts submitted and representations made, we conclude that the operation and management of Trust assets, pursuant to the Partnership Agreement, LLC Agreement, and State Trust Code, will not cause Trust to lose its exempt status for GST tax purposes. Further, based on the facts submitted and representations made, and assuming the fair market value of the Partnership interests that Trust received is not greater than the fair market value of Trust’s assets exchanged, we conclude that the receipt of Partnership interests by Trust will not be treated as an addition to Trust for purposes of chapter 13.

RULING 3

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

The operation and management of Trust's assets, pursuant to the Partnership and LLC Agreements and State Trust Code, will not result in any change in the beneficial interests of any Trust beneficiary. The Partnership Agreement and the LLC Agreement provide that Partnership must distribute, at least annually, its "net cash from operations" as well as any amounts sufficient to allow a partner that is a trust to make any distributions required by the applicable trust instrument of such trust. The amount required to be distributed under the Partnership Agreement and LLC Agreement is equivalent to the amount required to be distributed under Trust. No other modifications are proposed. The Trust termination provisions do not change. Accordingly, based on the facts submitted and representations made, we conclude that the operation and management of Trust's assets, pursuant to the Partnership and LLC Agreements and State Trust Code, will not cause any beneficiary of the Trust to have made a taxable gift for federal gift tax purposes under § 2501.

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.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Sincerely,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes