

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
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PLR-102229-13

Date:
July 1, 2013

Legend

Grantor =
Wife =
Trust =

Trustee =
Son 1 =
Son 2 =
Son 3 =
Grandchild 1 =
Grandchild 2 =
Grandchild 3 =
Grandchild 4 =
Grandchild 5 =
Grandchild 6 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
X =
State =
Court =

Grandchild 2 Trust =
Grandchild 3 Trust =
Grandchild 4 Trust =
Grandchild 5 Trust =

Grandchild 6 Trust =
a =

Dear :

This letter responds to your letter, dated December 28, 2012, and subsequent correspondence requesting a ruling on the generation-skipping transfer tax consequences of certain modifications to trusts.

Facts

On Date 1, Grantor established a revocable trust (Trust) to benefit his wife, Wife, during her life, and his children, Son 1, Son 2, and Son 3, and their lineal descendants. Trust became irrevocable on the date of Grantor's death, Date 2. Date 2 is prior to September 25, 1985. Grantor was survived by Wife, Son 1, Son 2, Son 3, Grandchild 1, Grandchild 2, and Grandchild 3. Wife died on Date 3. Currently, Son 1 has three children, Grandchild 1, Grandchild 2, and Grandchild 3. Son 2 has two children, Grandchild 4 and Grandchild 5. Son 3 has one child, Grandchild 6. All of the grandchildren are over X years old. There are currently fifteen great-grandchildren and one great-great-grandchild.

Pursuant to the terms of Trust, upon Wife's death, Trust was divided into three trusts, Son 1 Trust, Son 2 Trust, and Son 3 Trust. Pursuant to an amendment to Trust and Court Order, on Date 4, these three trusts were further divided into six separate trusts, Grandchild 1 Trust through Grandchild 6 Trust, all governed by the terms of Trust. Proposed modifications to Grandchild 2 Trust through Grandchild 6 Trust are the subject of this letter ruling request. Trustee is the trustee of Grandchild 1 Trust through Grandchild 6 Trust. It is represented that no additions have been made to Trust, Son 1 Trust, Son 2 Trust, Son 3 Trust, or Grandchild 2 Trust through Grandchild 6 Trust after September 25, 1985.

Paragraph 9 of the original Trust provided that as each any lineal descendant of a son attains age X, he or she shall be paid his or her full pro rata share of accumulated income, *per stirpes*, and thereafter be paid his or her pro rata share of current income in convenient installments until the trust is terminated. On Date 5, Paragraph 9 was amended to provide for an income "distribution amount" equal to a percent of the average of the fair market value of the grandchild's shares as of the close of the last business day of Trust's three previous calendar years, or the net income, whichever is greater.

Paragraph 9 provides further that the trustee may, in its sole discretion, in cases of emergency, the existence of which the trustee shall be the sole judge, make an advance or advances to any lineal descendant of the Grantor in such amounts or amounts as the trustee deems advisable. Records shall be kept of all such advances to

the end that they may be equalized, either out of future income, or upon final distribution, as the trustee in its judgment may deem best.

In addition, Paragraph 9 provides that Trust will terminate twenty years and eleven months after the death of the Grantor's last lineal descendants living at the time of the Grantor's death. Upon termination, the corpus held for the children of each of Grantor's sons shall be paid over to the lineal descendants of such son, share and share alike, *per stirpes*. At the same time, any undistributed income shall be paid over to those who would have been entitled to it had they already attained age X. Should any son die without leaving any surviving lineal descendant, or should the last surviving lineal descendant of any son die before final distribution, the share of corpus set aside for the children or possible children of such son, and any accumulated income, shall be equally divided and added to the corpus of the shares held in trust for the children of the Grantor's remaining sons and shall be held and distributed in the same manner as if it had been originally part of the corpus of such trusts.

For purposes of determining the date Trust terminates, there are six measuring lives currently living, Son 1, Son 2, Son 3, Grandchild 1, Grandchild 2, and Grandchild 3.

Proposed Modifications

On Date 6, Trustee petitioned Court seeking a Court order to modify Grandchild 2 Trust through Grandchild 6 Trust. Grandchild 1 removed her request for modifications to Grandchild 1 Trust. All of the living beneficiaries (either individually or through their representative) of Grandchild 2 through Grandchild 6 Trust consented to the requested modifications. In accordance with State law, representatives were appointed for unborn descendants of each class, and the unborn members of a class are bound by their representatives' consent. Court issued an Order on Date 7 approving the modifications, pending a favorable private letter ruling from the Internal Revenue Service (IRS). Court retained continuing jurisdiction over the matter to make any changes required by the IRS as a condition to a favorable ruling.

Trustee proposes to petition Court to exercise its continuing jurisdiction to make changes to the modifications approved in Date 7 Court Order. The proposed modifications to Trust and Grandchild 2 through Grandchild 6 Trust include the following modifications:

Paragraph 9g. In addition to the distribution amount set forth above, the Trustee may pay to or for the benefit of said grandchild such amounts as the Trustee in its sole discretion deems advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of said grandchild.

Paragraph 9h is modified to include the names of the measuring lives and to clarify that upon termination of a grandchild's trust, the remaining principal will be distributed outright to a living lineal descendant of that grandchild.

Paragraph 9i. In the event that the said grandchild shall die before the termination of this trust as set forth above, then and in that event, the trustee shall divide equally among and pay to the deceased grandchild's children the distribution amount and the trustee also may pay to or apply for the benefit of any one or more of the said deceased grandchild's children such sums from the principal of this share in such shares and proportions as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the said deceased grandchild's children, taking into consideration to the extent the trustee deems advisable, any other income or resources of the said deceased grandchild's children known to the trustee. Any payment or application of discretionary principal for a child of said deceased grandchild pursuant to this Paragraph shall be treated as an advancement and charged against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made. Any payment that is made hereunder to a child of a deceased grandchild, while that child is a minor, shall be made only with the input of the custodial parent of such child.

Paragraph 9j. This paragraph is amended to clarify that in the event a grandchild dies prior to the termination of his or her trust, without leaving any surviving lineal descendants, or should the last surviving lineal descendant die before termination of the trust, the trust principal and accumulated income will be divided equally and added to the corpus of the other grandchild trusts.

Paragraph 9k. This paragraph is amended to clarify that the trustee may, in its sole discretion, in cases of emergency, distribute principal, as an advance, from a grandchild's trust, to any lineal descendant of the Grantor and the grandchild of that trust.

Ruling Requested

The proposed modifications will not cause Trust or Grandchild 2 Trust through Grandchild 6 Trust to lose their grandfathered status for GST tax purposes and will not cause a distribution, or termination of any interest in Trust, or Grandchild 2 Trust through Grandchild 6 Trust, to be subject to GST tax.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433 of the Tax Reform Act of 1986 (the Act), GST tax is generally applicable to generation-skipping transfers 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 a transfer under a trust that was irrevocable on September 25, 1985, except to the extent that the transfer is made out of corpus added to the trust by an actual or constructive addition after September 1985.

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 generation-skipping transfer tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. In general, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. 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 § 26.2601-1(b)(4)(i)(A), (B), or (C)) 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 the instant case, the proposed modifications operate to accelerate the distribution of the principal in Grandchild 2 Trust through Grandchild 6 Trust to a grandchild and when grandchild dies, to a great-grandchild. The proposed modifications do not shift a beneficial interest in Grandchild 2 Trust through Grandchild 6 Trust to a lower generation and the proposed modifications do not extend the time for vesting of any beneficial interest in Grandchild 2 Trust through Grandchild 6 Trust. Consequently, based on the facts submitted and the representations made, we conclude that the proposed modifications will not cause Trust or Grandchild 2 Trust through Grandchild 6 Trust to lose their grandfathered status for GST tax purposes and will not cause a distribution or termination of any interest in Grandchild 2 Trust through Grandchild 6 Trust to be subject to GST tax.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter