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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-122611-13
Date: November 06, 2013

RE:

Legend

Decedent
Trust
Date 1
Date 2
Nephew
Niece
Individual 1
Individual 2

Dear :

This letter responds to your authorized representative's letter dated May 8, 2013, requesting gift, estate and generation-skipping transfer (GST) tax rulings with respect to the proposed modifications of Trust.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Decedent created Trust for the benefit of herself, her siblings, and her sibling's descendants. On Date 2, a date prior to September 25, 1985, Decedent died and Trust became irrevocable. Trust provides that the trustees are to pay all of the net income to the income beneficiaries at regular intervals, at least quarter-annually. Decedent's nephew, Nephew, and niece, Niece, are the sole current income beneficiaries.

Trust provides that at each of Nephew and Niece's respective deaths, each of their respective income interests in Trust will be paid to their then living spouses. If there are no such spouses, or at the death of a spouse, the respective income interests will be paid to their respective issue, *per stirpes*.

Article Fourth of Trust provides that upon the date that is 21 years after the death of Nephew, Niece, and each of their respective spouses, Trust shall terminate and the trustee is required to distribute one-half of the remaining Trust estate to Nephew's issue and one-half of the remaining Trust estate to Niece's issue, *per stirpes*. No distributions of principal are authorized to any of Trust's beneficiaries until the termination of Trust.

Decedent's brother was the original trustee. Article Fifth of Trust provides that, upon the brother's death, Nephew would become the successor trustee. Nephew is the current trustee. Article Fifth further provides, in relevant part, in the event of Nephew's subsequent death or inability to act as trustee for any reason, then the adult beneficiaries then entitled to the income from Trust may appoint a successor trustee. The beneficiaries may continue to appoint a successor trustee as often as necessary until Trust is ended and the trust estate is finally distributed.

The trustee represents that no additions have been made to Trust since Trust became irrevocable at Decedent's date of death.

The trustee and the beneficiaries of Trust propose to amend Article Fifth in a nonjudicial agreement. Article Fifth will be modified to provide that in the event of Nephew's subsequent death or inability to act for any reason as trustee, then Individual 1 and Individual 2 shall act as the successor co-trustees. If Individual 1 is at any time unable or unwilling to serve as a successor co-trustee, a majority of the then living adult issue of Nephew who are then income beneficiaries of Trust shall designate a successor co-trustee to serve in his place, and such issue may continue to appoint a successor trustee as often as necessary until Trust terminates and the trust estate is finally distributed. If Individual 2 is at any time unable or unwilling to serve as a successor co-trustee, a majority of the then living adult issue of Niece who are then income beneficiaries of Trust shall designate a successor co-trustee to serve in his place, and such issue may continue to appoint a successor trustee as often as necessary until Trust terminates and the trust estate is finally distributed. Notwithstanding the foregoing, Nephew may appoint both (but not only one of) Individual 1 and Individual 2 to serve with him as co-trustees. It is represented that these provisions are designed so that the issue of Nephew and the issue of Niece will each be represented by a co-trustee at all times following the time that Nephew is no longer serving as a trustee. At any time that two persons are acting as co-trustees, the co-trustees must act unanimously. At any time that more than two persons are acting as co-trustees, the co-trustees must act by majority. It is represented that Individual 1 is Nephew's son and Individual 2 is Niece's son.

You have requested the following rulings:

1. The proposed modification to Trust regarding the appointment of successor trustees will not be considered the creation of a general power of appointment under § 2041 or § 2514 of the Internal Revenue Code and the exercise of this power will not cause any portion of the Trust assets to be includible in the taxable estate of any Trust beneficiary, nor will the exercise of the appointment power be considered a transfer for federal gift tax purposes.
2. Trust is exempt from chapter 13 and the proposed modifications of Trust, as set forth in the nonjudicial agreement, will not cause Trust to lose its exempt status from the application of the GST tax.
3. Following the effective date of the nonjudicial agreement, no distributions or terminations of Trust will be subject to the GST tax as a result of the proposed modifications (contained in the nonjudicial agreement) to Trust.

Ruling 1

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1) provides that the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides that if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. A power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental

consequence of the discharge of such fiduciary duties is not a power of appointment.

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

Section 2511 provides, in part, that the tax imposed by § 2501 shall apply 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 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power. The definition of a general power of appointment under § 2514(c) is the same as provided in § 2041(b). Section 25.2514-1(b)(1) of the Gift Tax Regulations contains provisions similar to § 20.2041-1(b)(1), discussed above.

In this case, the powers exercisable by the trustees do not include any discretionary powers over either income or principal, and the trustees are prohibited from prematurely terminating or accelerating any beneficial interest in the trust. In view of the terms of Trust, modifying Trust to permit individuals who may also be beneficiaries of Trust to appoint, and be appointed as, additional or successor trustees, will not have the affect of creating a general power of appointment in any such individual for purposes of § 2041 or § 2514. Accordingly, based on the facts presented and the representations made, we conclude that the proposed modification to Trust will not be considered the creation of a general power of appointment under § 2041 or § 2514 and the exercise of this power will not cause any portion of the Trust assets to be includible in the taxable estate of any Trust beneficiary, nor will the exercise of the appointment power be considered a transfer for federal gift tax purposes.

Rulings 2 and 3

Section 2601 imposes a tax on every GST made after October 26, 1986. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a) provides that the term “taxable termination” means a termination (by death, lapse of time, release of a power, or otherwise) of an interest in property held in a trust unless (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) provides that the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Under § 2612(c)(1), a direct skip is a transfer subject to federal estate or gift tax of an interest in property to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the 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), the GST tax does not apply to a 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). Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under § 2038 or 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(1)(v) describes "constructive" additions to trusts in certain situations involving powers of appointment. In general, where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse.

Section 26.2601-1(b)(4)(i) 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. Thus (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 gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraph (b)(4)(i)(A), (B), or (C) of this section) 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.

Section 26.2601-1(b)(4)(i)(D)(2) provides that for purposes of this section, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

In § 26.2601-1(b)(4)(i)(E), Example 10 considers the following situation. In 1980, Grantor established an irrevocable trust for the benefit of Grantor's issue, naming a bank and five other individuals as trustees. In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and 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. In addition, 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. Therefore, the trust will not be subject to the provisions of chapter 13.

In this case, Trust became irrevocable prior to September 25, 1985. The trustee represents that there have been no additions to Trust after September 25, 1985. Thus, Trust is exempt from chapter 13. Under Ruling 1, we concluded that the proposed modifications do not constitute the release, exercise, or lapse of powers of appointment for purposes of §§ 2042 and 2514. Accordingly, the proposed modifications do not constitute constructive additions to Trust. In addition, the proposed modifications relate to the appointment and replacement of successor trustees. Under the terms of Trust, the trustees of Trust have no discretionary powers to distribute income or corpus to the beneficiaries, and the trustees are prohibited from prematurely terminating or accelerating any beneficial interest in the trust property. Accordingly, the proposed modifications are administrative in nature and under § 26.2601-1(b)(4)(i)(D)(2), will not be considered to shift a beneficial interest to a lower generation in the trust or extend the time for vesting of any beneficial interest in the trust beyond the period provided for in Trust. See Example 10 of § 26.2601-1(b)(4)(i)(E). Therefore, based upon the facts

submitted and the representation made, we conclude that the proposed modifications of Trust will not cause Trust to lose its exempt status from GST tax and, following the effective date of the nonjudicial agreement, no distributions or terminations of Trust will be subject to the GST tax as a result of the proposed modifications (contained in the nonjudicial agreement) to Trust.

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) 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