

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201510016**
Release Date: 3/6/2015

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Index Number: 2036.00-00, 2037.00-00,
2038.00-00, 2501.00-00,
2601.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-116835-14

In Re:

Date:
October 16, 2014

Legend

Grantor 1	=
Spouse	=
Grantor 2	=
Trust 1	=
Trust 2	=
Trust 3	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Child	=
Taxpayers	=

Court 1 =
Court 2 =
County =
Farm =
Agreement of Sale =

A	=
V	=
W	=
X	=
Y	=
Z	=
Limited Partnership	=
Trustee 1	=
Trustee 2	=
Year	=

Dear _____ :

This letter responds to your authorized representative's letter of April 11, 2014 requesting rulings on the gift, estate and generation-skipping transfer (GST) tax consequences of a proposed transaction.

The facts and representations submitted are summarized as follows: On Date 1, Grantor 1 established an irrevocable trust (Trust 1) for the benefit of himself, Spouse, and his lineal descendants. Grantor 1 died on Date 5 and Spouse died on Date 7. The corporate trustee of Trust 1 is Trustee 1.

On Date 2, Grantor 2 established a revocable trust (Trust 2) for the benefit of himself. On Date 3, Grantor 2 amended Trust 2 so that income was paid in equal shares to his daughter (Grantor 1's spouse (Spouse)), and his son (Child) for life. In addition, on Date 3, Grantor 2 released his right to further amend or revoke Trust 2. On Date 6, by Court 1 order, Trust 2, as amended, was divided into two irrevocable equal trusts, one for the benefit of Spouse and her descendants (Trust 3) and one for the benefit of Child and his descendants. Grantor 2 died on Date 4. The corporate trustee of Trust 3 is Trustee 2. Trust 1 and Trust 3 and the trust beneficiaries of those trusts (Taxpayers) are the parties requesting this ruling.

Currently, the beneficiaries of Trust 1 and Trust 3 are essentially the same. Trust 1 provides that the trustees are to pay the net income for the benefit of Grantor 1's issue, share and share alike, *per stirpes*. Trust 1 terminates twenty-one years after the death of the survivor of Grantor 1's three children. Trust 3 provides that the trustees are to pay the net income to Spouse's issue, *per stirpes*. Trust 3 terminates twenty-one years after the death of the last surviving lineal descendant of Grantor 2 living at the time of Grantor 2's death.

Trust 1 and Trust 3 together own Farm in County. Trust 1 owns Y acres and Trust 3 owns Z acres. The acreage in Farm owned by Trust 1 and Trust 3 is generally contiguous. However, the acreage owned by each trust was acquired at different times so that some of the parcels owned by each trust are land-locked, and access to these parcels from a public road is only possible via easements over acreage owned by the

other trust. The trustees of both trusts have decided it is in the best interest of Trust 1 and Trust 3 to sell the property in a coordinated sale. The real estate owned by each trust is subject to various zoning and land use restrictions and is not currently serviced by public water and sewer. The property is currently zoned for agricultural and residential use and for public land use.

Farm has been on the market for several years, since Year. The purchaser is Limited Partnership, which is owned by A, who is a lineal descendant of both Grantor 1 and Grantor 2, and is the trustee of a trust that is a current beneficiary of Trust 1, and a contingent beneficiary of Trust 3. A is a licensed real estate broker and is a developer of residential real estate in the area where Farm is located.

The Agreement of Sale was negotiated by Trustee 1 of Trust 1 and Trustee 2 of Trust 3, with some input from the beneficiaries. The trusts and A, the purchaser, were represented by separate counsel. It is represented that the sale price is \$X which is consistent with two independent appraisals and recent land sales in the area. Upon completion of all closings, Trust 1 will receive W percent of the purchase price and Trust 3 will receive V percent of the purchase price.

The sellers' obligations are conditioned on (1) Trust 1 and Trust 3 receiving approval of the sale from Court 2; (2) the beneficiaries of Trust 1 and Trust 3 performing certain conditions in the event Trust 1 terminates prior to the closing of the sale; (3) the beneficiaries of Trust 1 and Trust 3 approving and ratifying the Agreement of Sale; and (4) the Taxpayers receiving a favorable private letter ruling.

Trust 1 will terminate on Date 8, and Trust 3 will terminate at a much later date, yet to be determined. Trust 1 and Trust 3 were irrevocable prior to September 25, 1985. It is represented that no additions have been made to Trust 1 or Trust 3 after September 25, 1985.

You have requested the following rulings:

1. The execution and/or the carrying out of the terms of the Agreement of Sale and the exercise of any right, obligation or remedy hereunder will not constitute an addition to either Trust 1 or Trust 3 or cause Trust 1 or Trust 3 to lose its GST tax exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986, or under § 26.2601-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations; and distributions from Trust 1 and Trust 3 will not be subject to GST tax under § 2601 of the Internal Revenue Code, provided that no additions, actual or constructive, are otherwise made to Trust 1 or Trust 3.

2. The entering into the Agreement of Sale and the carrying out of the terms thereof will not cause any beneficiary of either Trust 1 or Trust 3 to make or be deemed to have made a taxable gift to any other beneficiary or to A.

3. The execution and/or the carrying out of the terms of the Agreement of Sale will not cause any beneficiary to be required to include in his or her taxable estate trust assets owned by Trust 1 or Trust 3, unless such assets have been distributed to such person prior to his or her death.

Ruling 1

Section 2601 imposes a tax on each generation skipping transfer.

Under § 1433(a) of the Tax Reform Act of 1986 (Act), 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 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 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 this paragraph 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 § 26.2601-1(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.

Trustees will seek Court 2 approval of the sale of Farm. Trustees will join with all living beneficiaries of Trust 1 and Trust 3 in the proposed Court 2 proceeding. The Agreement of Sale will only be binding on Trust 1 and Trust 3 if the trusts receive approval from Court 2. As part of the proceedings, the trustees will petition the court to appoint a guardian and trustee *ad litem* to represent the interests of minor, unborn, and unascertained descendants of Grantor 1 and Grantor 2. In addition, the Agreement of Sale is binding only if Trust 1 and Trust 3 receive from all beneficiaries of Trust 1 and Trust 3 ratification and approval of the Agreement of Sale. As part of the court approval process, Court 2 must determine that the Agreement of Sale is fair and reasonable, which determination includes the determination that the price reflects a fair market value and that the other terms of the sale are reasonable.

In this case, Trust 1 and Trust 3 were irrevocable prior to September 25, 1985. Therefore, Trust 1 and Trust 3 are currently exempt from GST tax.

The Agreement of Sale and sale of Farm is binding on Trust 1 and Trust 3 only if Court 2 approves the sale. The execution and/or the carrying out of the terms of the Agreement of Sale and the sale of Farm are administrative in nature and will not shift a beneficial interest in Trust 1 or Trust 3 to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to entering into the Agreement of Sale or the sale of Farm. Further, execution of the Agreement of Sale and the sale of Farm does not extend the time for vesting of any beneficial interest in Trust 1 or Trust 3 beyond the period provided for in the original trusts.

Based on the facts submitted and the representations made, we conclude that the execution and/or the carrying out of the terms of the Agreement of Sale and the exercise of any right, obligation or remedy thereunder will not constitute an addition to either Trust 1 or Trust 3 or cause Trust 1 or Trust 3 to lose its GST tax exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986, or under § 26.2601-1(b)(4)(i), and distributions from Trust 1 and Trust 3 will not be subject to GST tax under § 2601 provided that no additions, actual or constructive, are otherwise made to Trust 1 or Trust 3.

Ruling 2

Section 2501 imposes a tax for each calendar year 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 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

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

Section 25.2512-8 of the Gift Tax Regulations provides that transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate consideration in money or money's worth.

Trust 1 and 3 propose to sell acreage in Farm. It is represented that the trustees have obtained two independent appraisals on the value of Farm and that the sales price is consistent with the appraisals and other sales of land in the area. The Agreement of Sale has been negotiated at arm's length by the corporate trustees of Trust 1 and Trust 3. The beneficiaries of both trusts must consent to the sale. The trusts and A, the purchaser, were represented by separate counsel. To secure approval of Court 2, the trustees will have to demonstrate that the Agreement of Sale is fair, reasonable, and that the terms are arm's length. The trustees have a fiduciary duty to act in the best interests of all of the beneficiaries.

Based on the facts submitted and the representations made, and provided Court 2 approves the Agreement of Sale, and finds the Agreement of Sale is fair, reasonable, and that the terms are arm's length, we conclude that the entering into the Agreement of Sale and the carrying out of the terms thereof will not cause any beneficiary of either Trust 1 or Trust 3 to make or be deemed to have made a taxable gift to any other beneficiary or to A.

Ruling 3

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2035(a) provides that if (1) the decedent transferred (by trust or otherwise) an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038, or 2042 if the transferred interest or relinquished power had been retained by the decedent on the date of death, the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for his life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death - (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) the possession or enjoyment thereof can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property and the value of the reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of the property.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of the decedent's death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

In order for §§ 2035 through 2038 to apply, a decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. In this case, the corporate trustees of Trust 1 and Trust 3 propose to sell Farm to Limited Partnership, owned by A, in exchange for \$X. The acreage in Farm is an asset

of each trust. The beneficiaries are not transferring assets to Trust 1, Trust 3, or any other trust. Accordingly, the beneficiaries are not transferors for purposes of §§ 2036, 2037, or 2038.

Based on the facts submitted and the representations made, we conclude that the execution and/or the carrying out of the terms of the Agreement of Sale will not cause any beneficiary to be required to include in his or her taxable estate trust assets owned by Trust 1 or Trust 3, unless such assets have been distributed to such person prior to his or her death.

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 specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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 Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures
Copy for section 6110 purposes

cc: