

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201626016**
Release Date: 6/24/2016
Index Number: 2601.03-06

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
_____, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-137719-15
Date:
March 15, 2016

Legend

Trustor =
Trust =

Son =
A =
B =
C =
Bank =
State Law 1 =

State Law 2 =

State Law 3 =

Court =

Nonjudicial Settlement Agreement =

Date 1 =
Date 2 =
Date 3 =
X =

Dear _____ :

This letter responds to the October 7, 2015 letter and subsequent correspondence, submitted on your behalf by your authorized representative,

requesting rulings on the generation-skipping transfer (GST) tax consequences of the proposed termination of a trust.

FACTS

The facts and representations submitted are summarized as follows. Trustor died on Date 1. Trustor created Trust under the terms of his will for the benefit of Son and Son's descendants. The current trustees of Trust are A, a grandchild of Trustor, B, a great-grandchild of Trustor, and Bank. Date 1 is a date prior to September 25, 1985. It is represented that no additions, actual or constructive, have been made to Trust since September 25, 1985.

Trust is currently held for the benefit of Son's lawful descendants in the manner provided in paragraph (c) of Article IV of Trustor's will. Paragraph (c) provides that the trustees shall hold the fund created for Son's descendants in trust for the benefit of Son's lawful descendants from time to time living and may distribute among those descendants of Son so much or all of the net income of the fund as the trustees, in their absolute discretion, shall from time to time deem advisable, with power to exclude any one or more of the descendants from any distribution or to make unequal distributions among them. Any remaining net income shall be accumulated and added to principal.

Paragraph (c) further provides that if at any time or from time to time the funds available to any of the descendants from all sources known to the trustees shall be insufficient, in the judgment of the trustees, to provide for that descendant's reasonable comfort, support and education, the trustees may distribute to that descendant so much of the principal of the fund as the trustees, in their discretion, shall deem necessary for any such purpose. Twenty-one (21) years after the death of the last survivor of Trustor's wife, and all of Trustor's descendants and their spouses living at Trustor's death, the trustees shall distribute the fund *per stirpes* to the then living lawful descendants of Son, or if no such descendant shall then be living, to Trustor's then living lawful descendants.

State Law 1 provides that termination of a trust may be resolved by a nonjudicial settlement agreement, provided that court approval of such termination is obtained in accordance with State Law 2 and the court concludes continuance of the trust is not necessary to achieve any clear material purpose of the trust. Upon such termination, the court may order the trust property distributed as agreed by the parties to the agreement or otherwise as the court determines equitable consistent with the purpose of the trust. State Law 3 provides that a minor beneficiary or unborn beneficiary may be represented and bound by another beneficiary having a substantially similar interest.

Currently, Trust has eighteen living beneficiaries, five of whom are minors. The value of Trust is \$x. It is represented that the number of living beneficiaries and potential beneficiaries makes the administration of Trust unwieldy, and it is very difficult

for the trustees to determine and weigh the relative needs of the beneficiaries and potential beneficiaries for the purpose of making all distributions. As a result, the time and cost expended in the administration of Trust has become disproportionate to the value of Trust and made it difficult to maintain the intended purposes of Trust.

On Date 2, the thirteen adult beneficiaries of Trust entered into a Nonjudicial Settlement Agreement. Under the terms of Nonjudicial Settlement Agreement, Trust will terminate and the trustees of Trust will distribute the trust estate in equal shares to twelve of the current adult beneficiaries, each of whom is either a grandchild or great-grandchild of Son. The remaining adult beneficiary, C, and the five minor beneficiaries, each of whom is a great-great grandchild of Son, will not receive a distribution.

In accordance with State Law 2, the trustees and beneficiaries of Trust petitioned Court to terminate Trust. On Date 3, Court issued an Order approving the Nonjudicial Settlement Agreement, directing the trustees to apply for a private letter ruling from the Internal Revenue Service to confirm that the contemplated distributions will be exempt from GST tax, and directing the trustees, upon receipt of a favorable ruling, to terminate Trust and distribute Trust assets pursuant to the terms of the Nonjudicial Settlement Agreement.

RULING REQUESTED

You have requested a ruling that termination of Trust pursuant to the Court-approved Nonjudicial Settlement Agreement, by making distributions to existing beneficiaries who are grandchildren and great-grandchildren, to the exclusion of great-great-grandchildren and future beneficiaries of later generations: (1) will not cause Trust to become subject to GST tax under chapter 13, and (2) no such distribution will be a direct skip, a taxable distribution or a taxable termination within the meaning of § 2612.

LAW

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

Section 2612(a)(1) provides that the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless immediately after such termination, a non-skip person has an interest in such property, or at no time after such termination may a distribution (including 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 direct skip).

Section 2612(c) provides that the term “direct skip” means any transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

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 the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

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) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains exempt status for GST 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. 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 generation-skipping transfer or the creation of a new generation-skipping transfer.

In the present case, Trust was irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, were made to Trust after that date.

Based upon the facts submitted and the representations made, we conclude that the proposed termination of Trust pursuant to the Court-approved Nonjudicial Settlement Agreement will not cause a beneficial interest to be shifted to a beneficiary who occupies a generation lower than the beneficiaries who held the interests prior to

the termination, or extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original Trust. Accordingly, we rule that the proposed termination of Trust will not cause Trust to become subject to GST tax under chapter 13, and that no termination distribution made pursuant to Order will be a direct skip, a taxable distribution or a taxable termination within the meaning of § 2612.

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 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

Lorraine E. Gardner

Senior Counsel

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of for § 6110 purposes
Copy of this letter

cc: