Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201928004**
Release Date: 7/12/2019

Index Number: 61.00-00, 661.00-00, 662.00-00, 643.06-00, 1001.00-00, 1015.03-01, 2036.01-00, 2038.01-01, 2501.01-00, 2601.01-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-125352-18

Date:
March 21, 2019

In Re:

Legend

Date 1	=
Husband	=
Wife	=
Trust Agreement	=
Bank	=
x	=
Son	=
Trust	=
Child 1	=
Child 2	=
Child 3	=
Child 4	=
Child 5	=
Date 2	=
Court	=
Order	=

Statute =

Dear :

This letter responds to your personal representative's letter of July 31, 2018, in which rulings are requested on the income, estate, gift and generation-skipping transfer (GST) tax consequences of the proposed division of Trust.

The facts and representations submitted are as follows:

On Date 1, a date prior to September 25, 1985, Husband and Wife ("Trustors") executed Trust Agreement, creating an irrevocable trust for the benefit of their issue. Pursuant to the terms of Trust Agreement, the trustee accumulated the net income of the trust and added it to principal for a period of x months following Date 1. Upon the conclusion of the x-month period, the trustee divided the principal of the trust into equal shares among the Trustors' living children, including a share to be held for the benefit of Son and his issue ("Trust"). Son has five children, Child 1, Child 2, Child 3, Child 4 and Child 5 (collectively, "Son's Children"). Bank is currently serving as trustee of Trust ("Trustee"). Trust is the subject of this ruling request.

Pursuant to § 3(b)(i) of Trust Agreement, Trustee is to pay so much of the income or principal of Trust to or for the benefit of Son or his issue as Trustee deems advisable for their care, comfort, support and education, or in the case of sickness or other emergency. Upon Son's death, Trust is held in continuing trust for Son's Children until the youngest of Son's Children is age 21, at which point Trust terminates and is distributed to Son's issue, per stirpes. All of Son's Children have reached age 21.

If upon Son's death, Son has no issue living, then distribution will be made to Son's brothers or sisters, per stirpes. Because Son's Children have different investment goals and distribution needs, Trustee proposes to divide Trust into five subtrusts ("Subtrust"; collectively, the "Subtrusts") for the benefit of Son and each of Son's Children and their respective issue ("Proposed Division"). Each Subtrust will be funded with one-fifth of the assets of Trust. The terms of each Subtrust will be identical and unchanged from the terms of Trust Agreement, except that each Subtrust will be held for the benefit of Son and his respective child for whom the Subtrust was created and such child's issue. Any distribution to Son from a Subtrust will be pro rata from each Subtrust.

In accordance with the terms of the Trust Agreement, each Subtrust will terminate on Son's death and remaining Subtrust assets will be distributed to the then living child for whom the Subtrust was created, or, if such child is deceased, to the then living issue of the deceased child, per stirpes. If the child dies without living issue, then the Subtrust will be distributed to Son's other living issue, per stirpes.

On Date 2, after proper notice to all interested parties, Court issued Order authorizing the Proposed Division upon the receipt of a favorable private letter ruling from the Internal Revenue Service. Statute provides that after notice to the qualified trust beneficiaries and to the holders of powers of appointment, a trustee may divide trust property into 2 or more separate portions or trusts and allocate property between them if the trusts have substantially identical terms and conditions or if the result does not impair the rights of any beneficiary or adversely affect the achievement of the purposes of the trust.

It is represented that Trust was irrevocable prior to September 25, 1985, and that no additions, actual or constructive, have been made to Trust.

Trustee requests the following rulings:

1. The Proposed Division of Trust into the Subtrusts and the pro rata allocation of the assets of Trust among the Subtrusts will not cause Trust or any of the Subtrusts to lose its grandfathered status for purposes of the GST tax, or otherwise become subject to GST tax.

2. The Subtrusts will be treated as separate taxpayers for federal income tax purposes under § 643(f) of the Internal Revenue Code (Code).

3. The Proposed Division will not be treated as a distribution and cause any of the Subtrusts to recognize income, gain or loss from a sale or other disposition of property under § 61, § 661, § 662 or § 1001.

4. The adjusted basis and holding periods of each of the Subtrust assets will be the same as the adjusted basis and holding periods of the Trust assets under § 1015 and § 1223(2).

5. The Proposed Division of Trust and the pro rata allocation of the assets of Trust among the Subtrusts will not cause such assets to be includable in the gross estate of any of the beneficiaries under § 2035, § 2036, § 2037, or § 2038.

6. The Proposed Division of Trust and the pro rata allocation of the assets of Trust among the Subtrusts will not constitute a transfer subject to federal gift tax under § 2501.

Ruling 1

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

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) of the regulations, the 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).

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 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) 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 GST or the creation of a new GST.

Section 26.2601-1(b)(4)(i)(E), Example 5, provides as follows. In 1980, Trustor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, per stirpes. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the

trust principal is to be distributed equally to B's issue, per stirpes. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any 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 division. In addition, the division 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 two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

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

The Proposed Division of Trust is substantially similar to the situation described in § 26.2601-1(b)(4)(i)(E), Example 5. Under the Proposed Division, the Subtrusts will, except as described above, be administered under the original terms of Trust.

Based on the facts submitted and the representations made, we conclude that the Proposed Division of Trust will not shift a beneficial interest in the respective Subtrust to any beneficiary who occupies a lower generation than the persons holding the beneficial interests prior to the division. In addition, the Proposed Division will not extend the time for vesting of any beneficial interest in the Subtrusts beyond the period provided in the original terms of Trust. Accordingly, the Proposed Division of Trust into the Subtrusts and the pro rata allocation of the assets of Trust among the Subtrusts will not cause Trust or any of the Subtrusts to lose its grandfathered status for purposes of the GST tax, or otherwise become subject to GST tax.

Ruling 2

Section 643(f) provides that two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of federal income tax.

Section 1806(b) of the Tax Reform Act of 1986 provides that § 643(f) shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust that was irrevocable on March 1, 1984, it shall apply only to that portion of the trust that is attributable to contributions of corpus after March 1, 1984.

Accordingly, based on the facts submitted and representations made, the Proposed Division of Trust will result in each Subtrust having different primary beneficiaries. We conclude that as long as each Subtrust created by the Proposed Division is separately managed and administered, they will be treated as separate trusts for federal income tax purposes.

Ruling 3

Section 61(a)(3) and (15) provides that gross income includes gains derived from dealings in property and income from an interest in a trust.

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662 provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

A partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest as a result thereof. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56-437, 1956-2 C.B. 507 (conversion of a joint tenancy in stock

to a tenancy in common in order to eliminate the survivorship feature and the partition of a joint tenancy in stock are not sales or exchanges).

Similarly, divisions of trusts are also not sales or exchanges of trust interests where each asset is divided pro rata among the new trusts. See Rev. Rul. 69-486, 1969-2 C.B. 159 (pro rata distribution of trust assets not a sale or exchange).

In the present case, the legal entitlements, as well as the rights and powers, of the beneficiaries will remain the same in kind and extent after the Proposed Division of Trust into the Subtrusts. Accordingly, based on the facts submitted and representations made, the Proposed Division of Trust will not result in the realization of gain or loss under § 61 and § 1001.

Moreover, based on the facts submitted and representations made, we conclude that the Proposed Division is not a distribution under § 661 or § 1.661(a)-2(f). We further conclude that the Proposed Division of Trust assets among the Subtrusts will not cause Trust, the Subtrusts, or beneficiaries to recognize any income, gain, or loss under § 662.

Ruling 4

Section 1015(b) provides that if property is acquired after December 31, 1920, by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by transfer in trust by gift, bequest, or devise), the basis of property so acquired is the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by transfer in trust, this basis applies whether the property is in the hands of the trustee or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Section 1223(2) provides that in determining the period for which the taxpayer has held property, however it is acquired, there shall be included the period for which the property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of the other person.

Based on the facts submitted and the representations made, we conclude that because § 1001 does not apply to the Proposed Division, under § 1015 the basis of the assets received by Subtrusts will be the same as the respective basis of the assets held by

Trust. We further conclude that under § 1223(2) the holding period of the assets received by the Subtrusts will be the same as the holding period of the assets in Trust.

Ruling 5

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

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 death.

Section 2035(a) provides that if (1) the decedent made a transfer (by trust or otherwise) of an interest in any 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 such property (or an interest therein) would have been included in the decedent's gross estate under § 2036, § 2037, § 2038, or § 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of the decedent's death, the value of the gross estate shall include the value of any property (or interest therein) which 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 and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his 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) possession or enjoyment of the property 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 such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such 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 his death to any change through the exercise of a

power, either by the decedent alone or in conjunction with any person, to alter, amend, revoke, or terminate, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death.

In order for § 2036 through § 2038 to apply, the 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 the present case, the beneficiaries of the Subtrusts will have the same interests after the Proposed Division that they had as beneficiaries under Trust. The distribution, management, and termination provisions of each Subtrust will be substantially similar to the current distribution, management, and distribution provisions of Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the Proposed Division of Trust and the pro rata allocation of the assets of Trust among the Subtrusts will not cause any portion of the assets of the Subtrusts to be includible in the gross estate of any of the beneficiaries of the Subtrusts under § 2035, § 2036, § 2037, or § 2038.

Ruling 6

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 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 is deemed a gift that is included in computing the amount of gifts made during the calendar year.

In the present case, the beneficial interests, rights, and expectancies of the beneficiaries will be substantially the same, both before and after the Proposed Division of Trust. Thus, we conclude that no transfer of property will be deemed to occur as a result of the Proposed Division. Accordingly, based on the facts submitted and representations made, we conclude that the Proposed Division of Trust and the pro rata allocation of Trust among the Subtrusts will not result in a transfer by any beneficiary of Trust that is subject to the gift tax under § 2501.

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.

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.

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

Sincerely,

Karlene M. Lesho
Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy for § 6110 purposes
Copy of this letter