

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
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Date:
February 18, 2022

Re:

Legend

- Decedent =
- Trust =

- Child =
- Grandchild A =
- Grandchild B =
- Great Grandchild =
- Bank =
- Court =
- State Statute =
- Date 1 =
- Date 2 =
- Date 3 =
- x =

Dear _____ :

This letter responds to your letter, dated October 12, 2020, submitted by your authorized representative, requesting a generation-skipping transfer (GST) tax ruling with respect to a proposed judicial modification of Trust B.

Decedent died testate on Date 1, a date prior to September 25, 1985. Under the terms of Decedent's last will and testament, a trust, Trust B, was created for the benefit of Decedent's daughter (Child), Child's two daughters (Grandchild A and Grandchild B), any subsequent children, and the issue of Grandchild A and Grandchild B (Beneficiaries). The current trustee is Bank.

Under the terms of Trust, during Child's life, the trustees shall pay to, or apply for the benefit of, any one or more of the Beneficiaries of Trust B, all the net income in such amounts and proportions as the trustees in their discretion shall determine. Further, the trustees have the power to invade the principal of Trust B in whole or in part and pay any such principal over to, or apply it for the benefit of, any one or more of the Beneficiaries. Upon the death of Child and when no grandchild is living who is under the age of thirty (30) years, the trustees shall divide Trust B into equal separate shares so as to provide one share for each then living grandchild and one share for each deceased grandchild who shall leave issue then living. The share for each living grandchild shall be paid over free of trust to the grandchild, and the share for each deceased grandchild shall be distributed free of trust, *per stirpes*, to the issue of the deceased grandchild.

Child, Grandchild A, and Grandchild B survived Decedent. Grandchild B has one child, Great Grandchild, a minor. Both Grandchildren are over age 30. On Date 2, Child petitioned Court to modify Trust B. Trustee, Grandchild A, Grandchild B, individually and as representatives of Great Grandchild and any unborn or unascertainable beneficiaries, are respondents.

The proposed modification provides that, upon Child's death, the trustee shall divide Trust B into equal separate shares so as to provide one share for each then living grandchild and one share for each deceased grandchild who shall leave issue then living. Any share of Trust B provided for any living grandchild, other than Grandchild B, shall be distributed to such child and any share provided for a deceased grandchild who leaves surviving issue shall be distributed in *per stirpital* shares to the then living issue of such deceased grandchild and any share provided for Grandchild B shall be held by the trustee and administered and distributed for her benefit as follows. During Grandchild B's lifetime, the trustee shall distribute to Grandchild B a unitrust amount equal to x% of the trust assets valued annually. In addition, the trustee has the discretion to distribute as much of the net income and principal of Grandchild B's Trust as the trustee in its discretion determines for Grandchild B's health, education, support, and maintenance. Any net income not so distributed shall be accumulated and annually added to principal. Upon Grandchild B's death, the property in Grandchild B's Trust shall be distributed to such one or more persons, including Grandchild B's estate, as Grandchild B may appoint by Will. In default of such appointment, Grandchild B's Trust will terminate and its assets will be distributed to Grandchild B's then-living descendants, *per stirpes*, or if there is no descendant of Grandchild B, to the then living descendants of Child, in *per stirpital* shares.

State Statute provides that a noncharitable irrevocable trust may be modified with court approval upon consent of all of the beneficiaries, if the court concludes that modification is not inconsistent with a material purposes of the trust. All of the Beneficiaries of Trust B have consented to the proposed modification. On Date 3, Court approved the petition to modify Trust B upon receipt of a favorable ruling from this

office. It has been represented that no additions have been made to Trust B after September 25, 1985.

You have requested a ruling that the proposed judicial modification of Trust B will not cause Trust B to lose its exemption under § 26.2601-1(b)(1) of the Generation-Skipping Transfer Tax Regulations.

Law and Analysis

Section 2601 of the Internal Revenue Code 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.

Under § 1433 of the Tax Reform Act of 1986 (the 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 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 generation-skipping transfer 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 its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in the realization of capital 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 § 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 present case, the modification to Trust B pursuant to Court order provides that the trust property will be divided on Child's death among Decedent's then living descendants, as described above. Grandchild B's share that she would have otherwise received outright will continue in a separate trust, Grandchild B's Trust, for her sole benefit. Grandchild B will have a testamentary general power of appointment to appoint the trust property to any person, including Grandchild B's estate. Accordingly, the assets of Grandchild B's Trust will be included in Grandchild B's gross estate under

§ 2041(a)(2) and Grandchild B will be treated as the transferor of the property of her separate trust for GST tax purposes under § 2652(a)(1).

Under these circumstances, the proposed judicial modification of Trust B will not shift a beneficial interest in Trust B or Grandchild B's Trust to any beneficiary occupying a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification will not extend the time for vesting of any beneficial interest in Trust B or Grandchild B's Trust beyond the period provided in the original Trust, Trust B. Therefore, under the facts submitted and the representations made, we conclude that the proposed judicial modification of Trust B will not cause Trust B or Grandchild B's Trust to lose their exempt status under § 2601.

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, 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.

The ruling contained in this letter is 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.

Sincerely,

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

Enclosure:
Copy for § 6110 purpose

cc: