

Internal Revenue Service

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Person To Contact: ID No.

Telephone Number:

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Legend

Trust 1 =

Trust 1A =

Trust 1B =

Grantor =

Daughter =

Grandchild A =

Grandchild B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

State Statute =

State =

Probate Court =

X =

Y =

Dear _____ :

This letter responds to your authorized representative's letter dated February 6, 2024, requesting a ruling concerning the federal generation-skipping transfer (GST) and estate tax consequences of the proposed modification of Trust 1A.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Grantor established an irrevocable trust, Trust 1, for the benefit of the descendants of Grantor's daughter, Daughter. It is represented that no additions have been made to Trust 1 or Trust 1A after September 25, 1985.

Item II(a) of Trust 1 provides that the trustees are authorized to pay out or use part or all of the trust income and principal to or for the benefit of Daughter's descendants at such times and in such amounts as the trustees in their sole judgment and discretion deem best to provide for the descendants' support, education, health, maintenance, comfort and well-being.

Under Item II(c) and (d), on Daughter's death, the property remaining in the trust is to be divided *per stirpes* into trusts for Daughter's then living descendants. The trustees of each trust for a descendant of Daughter are authorized to pay out or use part or all of the income and principal of that trust to or for the benefit of that descendant, his or her descendants, and their respective spouses, at such times and in such amounts as the trustees in their sole judgment and discretion deem best to provide for their support, education, health, maintenance, comfort and well-being.

Item II(e) provides that, after the death of Daughter, when a descendant of Daughter for whose benefit a trust is established attains age x, one-half of that trust's property is to be distributed to him or her. When the descendant attains age y, all of that trust's property is to be distributed to him or her. If a descendant dies after a trust is set apart for him or her but before receiving all of that trust's property, that descendant's trust is to be distributed as that descendant directs in his or her will, except that he or she cannot appoint the property to himself or herself, his or her estate, his or her creditors, or the creditors of his or her estate. If the descendant fails to direct any part of his or her trust, then that part of the descendant's trust is to be distributed *per stirpes* among his or her then living descendants, if any, and, if none, *per stirpes* among the descendants of Grantor's descendant who is his or her nearest ancestor who has descendants then living.

In Year, the trustee of Trust 1 proposed a pro rata division of Trust 1 into separate trusts for the benefit of each child of Daughter. The trustee requested a private letter ruling from the Internal Revenue Service that the proposed pro-rata division of Trust 1 into separate trusts for the benefit of each child of Daughter would not cause Trust 1 or any of the successor trusts to be subject to the GST tax under § 2601. On Date 2, the Service issued a favorable private letter ruling. After Date 2, the trustee

divided Trust 1 into separate trusts for the children of Daughter, containing the same dispositive provisions as Trust 1. Accordingly, each trust provides that after the death of Daughter, when the child beneficiary of the trust attains the age of x, one-half of that trust's property is to be distributed to the child, and when the child beneficiary attains the age of y, all of that trust's remaining property is to be distributed to the child.

At the present time, Daughter is living. Daughter has two living children, Grandchild A and Grandchild B, each of whom have attained age y. Trust 1A is the trust for the benefit of Grandchild A and Trust 1B is the trust for the benefit of Grandchild B.

State Statute provides that the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration. Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court.

On Date 3, the trustee of Trust 1A petitioned Probate Court to modify the terms of Trust 1 as they apply to Trust 1A. Per the petition, Item II(e) of Trust 1A is modified to provide that the trust is to be held and administered in trust for Grandchild A's lifetime. Upon the death of Grandchild A, any remaining undistributed principal and income is to be distributed in such manner as Grandchild A directs or appoints, including the power to appoint such property to her creditors or the creditors of her estate, by making a specific reference to this general power of appointment in her last will and testament. If Grandchild A fails to effectively appoint any part of her trust, then such share of the trust is to be distributed *per stirpes* among her descendants then living and if none, then *per stirpes* among the descendants of Grantor who are still living.

On Date 4, Probate Court ordered that Trust be modified, contingent upon a favorable ruling from the Internal Revenue Service. The Court found that circumstances have changed such that it is in the best interests of Grandchild A that Trust 1A should not terminate upon the death of Daughter, but instead should last for the lifetime of Grandchild A. Because of the relatively large values of the assets within Trust 1A, Grandchild A will continue to need guidance, management, investment advice, and distribution assistance from a professional trustee. The modification to keep Grandchild A's inheritance in trust for her lifetime furthers the essential purpose of Trust 1A to provide financially for Grantor's grandchildren.

You have requested a ruling that after the proposed modification of the terms of Trust 1A, Trust 1 and Trust 1A will remain exempt from the application of the GST tax

and that no distribution from or termination of any interest in Trust 1 or Trust 1A will be subject to the GST tax.

LAW AND ANALYSIS

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

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was 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 under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its 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)(1) provides that a modification of the governing instrument of an exempt trust 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 a 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.

In the present case, the proposed modification of Trust 1A, under State Statute, provides that Grandchild A's interest in Trust 1A will continue to be held in trust for the exclusive benefit of Grandchild A during her lifetime. Instead of terminating upon the death of Daughter, Trust 1A will continue to be a trust until the death of Grandchild A. The assets of Trust 1A will be subject to Grandchild A's testamentary general power of appointment and will be included in Grandchild A's gross estate for federal estate tax purposes.

The proposed modification of Trust 1A will not result in a shift of any beneficial interest in the trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. In addition, the proposed modification of Trust 1A will not extend the time for vesting of any beneficial interest in the modified trust beyond the period provided for in the original trust. Accordingly, based on the facts presented and the representations made, we find that after the proposed modification of Trust 1A, Trust 1 and Trust 1A will remain exempt from the application of the GST tax and that no distribution from or termination of any interest in Trust 1 or Trust 1A will be subject to the GST tax.

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.

A copy of this letter should be attached to any gift, estate, or GST tax returns that you may file relating to this matter.

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,

Melissa C. Liquerman

[Melissa C. Liquerman]
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes

cc

cc:

cc: