

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7-PLR-117683-99

Date:

July 21, 2000

LEGEND:

a =

Decedent =

Trust =

b =

Son 1 =

Son 2 =

Daughter =

Company =

Foundation =

= B

c =

d =

e

City

A =

f

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Trust A =

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=

=

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Trust B

Trust C =

g =

Grandson

=

=

Granddaughter

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h =

Bank =

=

i

Court =

j =

=

Dear Sir or Madam:

In a letter, dated _____, you requested a ruling concerning the generation-skipping transfer (GST) tax consequences of the partition and the modification and clarification of the administrative provisions of the Trust, a grandfathered trust. This letter responds to your request.

The facts and representations submitted are summarized as follows: On a, Decedent created the Trust for the benefit of Decedent's lineal descendants. Decedent died testate in b, survived by Son 1, Son 2, and Daughter.

The terms of the Trust are summarized as follows:

Distribution of Income

The trustee is to pay the income from the Trust semiannually or more often in its discretion to the lineal descendants of Decedent who are living at the time of the respective distributions, all *per stirpes* and not *per capita*. In the event, however, that there is no income beneficiary living at the time of any distribution of income, the trustee is to pay the income to Company to be held in trust for Foundation.

Accumulation of Income

The trustee, in so far as retention is not forbidden by law, is to accumulate and retain in the Trust as a part of any income that otherwise would be payable to any person under the age of c years; provided, that the trustee in its discretion may pay that part of the income as may be necessary for his proper support and maintenance to any person to whom income otherwise would be payable were it not for the accumulation,

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except that no payment of income is to be made to any person toward whom Decedent owes any legal duty of support.

Termination

The Trust is to terminate on the first to occur of the following two events: (a) the death of the survivor among Decedent and all of Decedent's lineal descendants, and (b) d years after the death of the survivor among Decedent, Son 1, Son 2, and Daughter.

Distribution of Principal

On the final termination of the Trust, the then principal and corpus of the Trust is to be distributed to the then living lineal descendants of Decedent, all *per stirpes* and not *per capita*.

In the event that there are no lineal descendants of Decedent living at the time of the termination of the Trust, then the principal or corpus is to be divided into as many equal parts as there are children of Decedent who have died testate and who by their wills have exercised powers of appointment with respect to the principal; and thereupon the trustee is to pay over, deliver, and convey each of the parts to the persons or institutions that Decedent's children, respectively, have appointed by will; provided, that if only one of Decedent's children has exercised a power of appointment with respect to the principal or corpus, then the entire principal or corpus, or that part thereof over which the power has been exercised, is to be paid, delivered, and conveyed to the persons or institutions that the child has appointed; and, provided further, that if no one of Decedent's children has exercised a power of appointment with respect to the principal or corpus or if any of Decedent's children has exercised a power of appointment only as to a portion of the property over which the power is given, then the principal or corpus over which no power of appointment has been exercised is to be paid, delivered, and conveyed to Company in trust for Foundation, and thereupon, if practicable, the moneys or properties that may be turned over to that charity are to be added to the moneys or properties received by Foundation from Decedent's husband's father, A, and in the future the total of the gifts is to be referred to as B; and, provided, finally, however, that no appointment is to be made to or for the benefit of Decedent.

Successor to Trustee.

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In the event of the merger, consolidation, or sale of substantially all of its assets by Company, to or with another bank or trust company authorized to carry on a trust business, the merged, consolidated, or purchasing company is to become the trustee.

A majority of the adults then entitled to receive income from the Trust (or if only one, then that one) may at any time or times by instrument in writing delivered to the then trustee, name a successor trustee, and may change any designation of a successor trustee previously made (prior to the time when the successor trustee has become the trustee hereunder); provided that the successor trustee is to be a bank or trust company authorized to carry on a trust business in one or more states of the United States having a capital, surplus, and undivided profits of not less than e. If any adult renounces his or her right to name a successor trustee, a majority of the remaining adults (or if only one, then that one) then entitled to receive income are to have the right provided in this paragraph to name a successor trustee. In the event that the then trustee resigns, is removed, or fails or ceases to serve for any reason, the successor trustee named in the manner provided in this paragraph is to succeed to all the powers and duties of the original trustee. The right to name or designate a successor to the trustee is to be construed as including the right to remove the trustee or successor trustee.

In the event that the then trustee or successor trustee resigns, is removed, or fails or ceases to serve for any reason and a successor trustee has not been named as above provided, the successor trustee is to be a bank or trust company, with its principal office and place of business in City, and authorized to carrying on a trust business, which has the largest total of capital, surplus, and undivided profits of any such bank or trust company in City that is willing and able to serve.

In f, the trustee divided the Trust into three separate trusts, Trust A, Trust B, and Trust C, each of which has its own taxpayer identification number and each of which files its own fiduciary income tax return. Trust A, the trust for the benefit of Son 1 and his descendants, is the subject of this letter.

Son 1 died in g and his children, Grandson and Granddaughter, currently receive the income from Trust A by representation. Grandson and Granddaughter have reached age c. Therefore, no income currently is being accumulated.

Over the years the relationships among the income beneficiaries have deteriorated. Until h, Trust A, Trust B, and Trust C (collectively the Trusts) were administered by Bank. The income beneficiaries of the Trusts requested the resignation of Bank, but could not come to a majority agreement regarding the naming of a successor trustee as provided in the Trust. Because the Trust does not authorize the income beneficiaries to name a different successor trustee for each trust, Bank petitioned the Court to give each income beneficiary the power to name a separate

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successor trustee for his or her separate trust. Bank also petitioned the Court to divide Trust A into sub-trusts for the benefit of Grandson and Granddaughter.

On i, the Court issued an order granting the trustee permission to divide Trust A into two Sub-Trusts, one for the benefit of Grandson (Grandson's Trust) and one for the benefit of Granddaughter (Granddaughter's Trust) (collectively the Sub-Trusts) subject to the income beneficiaries obtaining a ruling from the Internal Revenue Service that the Trust will not lose its exemption from the GST tax. The Court order further authorizes and directs the trustee to allow the income beneficiary to appoint a separate successor trustee for his or her respective Trust. The Court order also authorizes and directs each successor trust, until the termination of the Trust, to administer each Sub-Trust by making current income distributions only to the income beneficiary or his or her respective living lineal descendants, *per stirpes*.

It is represented that following the Court Order, it became apparent that the terms for distributions prior to the Trust's termination needed clarification. All interested parties entered into Consent and Stipulation as to Terms Governing the Distribution of Trust Assets (Consent and Stipulation). The Court approved the Consent and Stipulation on j.

Paragraph 1 of the Consent and Stipulation provides that each of Trust A, Trust B, and Trust C (collectively, the Separate Trusts), and Sub-Trusts created from the division of a Separate Trust, will terminate at the same time on the first to occur of the following events: (a) the death of the survivor among all of Decedent's lineal descendants, and (b) d years after the death of the survivor between Son 2 and Daughter.

Paragraph 2 of the Consent and Stipulation provides that on the final termination, the assets of each of each Separate Trust and Sub-Trusts are to remain separated along the family lines of Decedent's children, except as otherwise specifically provided in the Consent and Stipulation.

Paragraph 3 of the Consent and Stipulation provides that on final termination, the balance of the assets in each Separate Trust is to be distributed *per stirpes* to the then-living descendants of the child of Decedent for whose benefit the Separate Trust was created.

Under Paragraph 4 of the Consent and Stipulation, on final termination, the balance of the assets in each Sub-Trusts is to be distributed to the income beneficiary of the Sub-Trust. In the event that the income beneficiary is not then living, the balance of the assets is to be distributed to the deceased income beneficiary's then-living descendants *per stirpes*, or if none, the assets are to be distributed *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living

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descendants. In the event a Sub-Trust has more than one income beneficiary, the balance of the assets in the Sub-Trust is to be distributed *per stirpes* to the then-living lineal descendants of the beneficiary for whose benefit the Sub-Trust was created.

Paragraph 5 of the Consent and Stipulation provides that on the final termination, in the event that a child of Decedent has no living lineal descendants, the balance of the assets in that child's Separate trust, or a Sub-trust created therefrom, as the case may be, is to be distributed to the then-living descendants of Decedent *per stirpes*.

Paragraph 6 of the Consent and Stipulation provides that in the event that no lineal descendants of Decedent are living on the final termination, all Trust assets are to be distributed pursuant to the "Distribution of Principal" section of the Trust.

Paragraph 8 of the Consent and Stipulation provides that prior to the final termination of the Separate Trust, the trustee is to pay the income from a Separate Trust semiannually (or more often in its discretion) to the child of Decedent for whom the Separate Trust was created.

Paragraph 9 of the Consent and Stipulation provides that after the death of a child of Decedent, the trustee is to pay the income from that the Separate Trust semiannually (or more often in its discretion) to the lineal descendants of the child who are living at the time of the respective distributions, *per stirpes*, subject to the "Accumulation of Income" section of the Trust. Notwithstanding the foregoing, if

- (a) one or more of the descendants of a deceased child request the trustee to divide the Separate Trust into sub-trusts for the descendants,
- (b) the trustee in its discretion considers it advisable to make such a division, and
- (c) the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its "grandfathered" exemption from the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the Separate Trust *per stirpes* among the then-living descendants of the deceased child. Each share created for a descendant is to be held and administered as a sub-trust for the benefit of that descendant.

Paragraph 10 of the Consent and Stipulation provides that in the event that, prior to final termination, any Separate Trust ceases to have a current income beneficiary (e.g., a Separate Trust's sole beneficiary dies without then-living lineal descendants) the balance of such Trust's assets are to be divided *per stirpes* among the then-living

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lineal descendants of Decedent and the share of such descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 11 of the Consent and Stipulation provides that the trustee is to pay the income from a Sub-Trust semiannually (or more often in its discretion) to the descendant of Decedent for whom the Sub-Trust was created.

Paragraph 12 provides that after the death of the descendant, the trustee is to pay the income from a Sub-Trust semiannually (or more often in its discretion) to the lineal descendants of the deceased descendant who are living at the time of the respective distributions, *per stirpes*, subject to the "Accumulation of Income" section of the Trust. Notwithstanding the foregoing, if

- (d) one or more of the descendants of a deceased descendant request the trustee to divide the Sub-Trust into further sub-trusts for the descendants,
- (e) the trustee in its discretion considers it advisable to make such a division, and
- (f) the Internal Revenue Service issues a favorable private letter ruling determining that such a division will not cause the Trust to lose its "grandfathered" exemption from the federal generation-skipping transfer tax,

then the trustee in its discretion may divide the Sub-Trust *per stirpes* among the then-living descendants of the deceased descendant. Each share created for a descendant is to be held and administered as a sub-trust for the benefit of such then-living descendant.

Paragraph 13 of the Consent and Stipulation provides that in the event that, prior to final termination, a Sub-Trust ceases to have a current income beneficiary (*e.g.*, a Sub-Trust's sole income beneficiary dies without then-living lineal descendants) the balance of the assets of the Sub-Trust is to be divided *per stirpes* among the then-living descendants of the deceased income beneficiary's nearest lineal ancestor who was a descendant of Decedent and who has one or more then-living descendants, or if none, *per stirpes* among the then-living lineal descendants of Decedent. Each share created for a then-living descendant is to be transferred to the Separate Trust or Sub-Trust benefitting the descendant.

Paragraph 14 of the Consent and Stipulation provides that each Separate Trust and each sub-Trust need not have the same trustee.

It is represented that the Trust was irrevocable on September 25, 1985, and there have been no additions, actual or constructive, to it since that date.

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You have requested the following rulings:

1. The proposed partition of Trust A will into Sub-Trusts for the benefit of Grandson and Granddaughter will not cause the resulting Sub-Trusts to be subject to the GST tax.

2. The modification and clarification of the administrative provisions of the Trust will not cause Trust A to become subject to the GST tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the tax does not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust.

Section 2611(a) defines the term "generation-skipping transfer" to mean: (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate or gift tax.

Section 2612(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person" to mean --

(1) a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or

(2) a trust --

(A) if all interests in such trust are held by skip persons, or

(B) if --

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(i) there is no person holding an interest in the trust, and

(ii) at no time after the transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

The Trust is a generation-skipping trust because it provides for distributions to more than one generation of beneficiaries below Decedent's generation. Because, however, the Trust was irrevocable on September 25, 1985, and there have been no additions (actual or constructive) to it since that date, it has been exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i). You have requested a ruling that the partition of Trust A into Sub-Trusts for the benefit of Grandson and Granddaughter and the proposed modification of the provision relating to the appointment of successor individual trustees of the Trust will not cause the Sub-Trusts to be subject to the GST tax.

An amendment to a trust that was irrevocable on September 25, 1985, and, thus, is exempt from the GST tax, will cause the trust to lose its exemption if the amendment modifies or otherwise changes the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of the trust. A trust's exemption from the GST tax is not affected, however, by amendments relating to the administration of a trust.

Based on the information submitted and the representations made, the interests of the income beneficiaries under the division of Trust A, will remain the same and the timing of the termination of the Sub-Trusts will remain the same. Consequently, the value of the income or corpus interest of each income beneficiary will not change materially as a result of the division of Trust A into two separately administered Sub-Trusts. Therefore, the division of Trust A into two Sub-Trusts will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the Trust. Accordingly, we conclude that the division of Trust A into two Sub-Trusts will not cause distributions from the Sub-Trusts to be subject to GST tax imposed by chapter 13, provided that no additions are made to the Sub-Trusts after September 25, 1985.

In addition, we conclude that the modification and clarification of the Separate Trust and the Sub-Trusts relates to the administration of those Trusts and will not modify or otherwise change the quality, value, or timing of any of the powers, beneficial interests, rights, or expectancies originally provided under the terms of the Trust. Accordingly, neither distributions from the Separate Trusts or the Sub-Trusts to skip persons nor terminations of interests of non-skip persons in the Separate Trusts or Sub-Trusts will be subject to the GST tax.

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Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions or any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)