

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4-PLR-128873-00

Date:  
March 27, 2001

Re:

Legend:

Trust T =

Decedent =  
Date =

Child 1 =  
Child 2 =  
Child 3 =  
Child 4 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trustees =

Bank =

State =

Dear :

This is in response to your letter dated November 30, 2000, in which you requested a ruling concerning the generation-skipping transfer tax consequences of the proposed partitions of certain trusts into separate trusts.

Facts:

The facts are represented to be as follows:

Decedent's mother died prior to 1985, survived by Decedent and Decedent's two siblings. Item V of Decedent's mother's will established Trust T, which was divided pursuant to the terms of the will into three separate shares, one for Decedent and one for each of her two siblings. Under Item V(d) of Decedent's mother's will, Decedent was given a testamentary limited power to appoint her share of Trust T to one or more of her descendants or to charity, either outright or in trust. Under Item V(f) of Decedent's mother's will, any trust created under the provisions of the will was to terminate at the time required by the State's rule against perpetuities.

Decedent died on Date, survived by four children, all of whom were born before the death of Decedent's mother. Under Item III of her will, Decedent exercised her power of appointment over her share of Trust T by appointing the property in further trust. The Trustees were directed to divide the property into four separate trusts. Trust 1 was created for the benefit of the issue of Child 1, Trust 2 was created for the benefit of the issue of Child 2, Trust 3 was created for the benefit of the issue of Child 3, and Trust 4 was created for the benefit of the issue of Child 4.

Under Item III(A)(1) of Decedent's will, the income of each separate trust is to be divided annually into as many shares as there are in that year living children of the child of Decedent for whom the trust is named. The Trustees are required to use so much of a grandchild's share of income as deemed necessary for the grandchild's benefit, and any excess is to be retained and reinvested for the benefit of that grandchild until that grandchild reaches age 21, at which time each grandchild will become entitled to all of the income of his or her share.

Under Item III(A)(4) of Decedent's will, each separate trust will terminate upon the death of the child of Decedent for whom the trust is named. At that time, the children of the deceased child who have attained age 30 will receive one-third of their share of the corpus, those who have attained age 35 will receive two-thirds of their share of the corpus, and those who have attained age 40 will receive their full share of the corpus. Children of the deceased child who have not reached age 30 by the time of their parent's death will receive one-third of their share of the corpus upon attaining age 30, one-third upon attaining age 35, and the final one-third upon attaining age 40.

Under Item III(A)(5) of Decedent's will, if a grandchild of Decedent dies leaving issue surviving, his or her share of income and principal will belong to such issue. If a grandchild of Decedent dies leaving no issue surviving, his or her share of income and principal will belong to his or her brothers and sisters and the issue, per stirpes, of any deceased brothers and sisters. If a grandchild of Decedent dies leaving no issue, no brothers or sisters, and no issue of deceased brothers or sisters, his or her share of income and principal is to be distributed, per stirpes, among the beneficiaries of the other trusts created for the issue of Decedent's other children. Item III(A)(5) further provides that if a child of Decedent survives Decedent but dies without issue, the separate trust created for the benefit of that child's issue is to be divided, per stirpes, among the beneficiaries of the other separate trusts.

Under Item III(A)(6) of Decedent's will, all distributions of corpus and income are to be

made at the times specified in the will or 21 years after the death of the last of Decedent's children living at the time of Decedent's mother's death, whichever occurs earlier.

At the present time, Child 1 is living and has three living children who are 30, 33, and 35 years of age. Under the terms of Decedent's will, the income of Trust 1 is divided annually into three equal shares and distributed to the three children of Child 1. At the death of Child 1, if no additional children are born to or adopted by him before that time, the corpus of Trust 1 will be divided into three shares, one for each child, and held in trust or distributed outright, in whole or in part, under Item III(A)(4) and Item III(A)(5) of Decedent's will.

At the present time, Child 2 is living and has three living children, one of whom is 31 and two of whom are 35 years of age. Under the terms of Decedent's will, the income of Trust 2 is divided annually into three equal shares and distributed to the three children of Child 2. At the death of Child 2, if no additional children are born to or adopted by her before that time, the corpus of Trust 2 will be divided into three shares, one for each child, and held in trust or distributed outright, in whole or in part, under Item III(A)(4) and Item III(A)(5) of Decedent's will.

At the present time, Child 3 is living and has two living children who are 27 and 29 years of age. Under the terms of Decedent's will, the income of Trust 3 is divided annually into two equal shares and distributed to the two children of Child 3. At the death of Child 3, if no additional children are born to or adopted by her before that time, the corpus of Trust 3 will be divided into two shares, one for each child, and held in trust or distributed outright, in whole or in part, under Item III(A)(4) and Item III(A)(5) of Decedent's will.

At the present time, Child 4 is living and has four children who are 15, 16, 20, and 21 years of age. Under the terms of Decedent's will, the income of Trust 4 is divided annually into four equal shares. The shares of the younger children are applied for their benefit or reinvested for their benefit, and the share of the 21-year-old is distributed to him. At the death of Child 4, if no additional children are born to or adopted by her before that time, the corpus of Trust 4 will be divided into four shares, one for each child, and held in trust or distributed outright, in whole or in part, under Item III(A)(4) and Item III(A)(5) of Decedent's will.

Child 1, Child 2, and Bank are the Trustees of all four trusts. The Trustees and the beneficiaries propose to partition each trust into separate trusts for the benefit of each of Decedent's living grandchildren. The purpose of the partitions is to facilitate the pursuit of different investment strategies by the beneficiaries. Each new separate trust will be funded with a pro rata portion of the assets of its predecessor trust, and each new separate trust will continue to be governed by the provisions of Decedent's will.

Trust 1 will be partitioned into three separate trusts for the benefit of Child 1's children. The new trusts will terminate at the death of Child 1. Although it is not expected that additional children will be born to or adopted by Child 1 prior to his death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the three trusts created out of Trust 1, so that the four trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

Trust 2 will be partitioned into three separate trusts for the benefit of Child 2's children. The new trusts will terminate at the death of Child 2. Although it is not expected that additional

children will be born to or adopted by Child 2 prior to her death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the three trusts created out of Trust 2, so that the four trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

Trust 3 will be partitioned into two separate trusts for the benefit of Child 3's children. The new trusts will terminate at the death of Child 3. Although it is not expected that additional children will be born to or adopted by Child 3 prior to her death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the two trusts created out of Trust 3, so that the three trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

Trust 4 will be partitioned into four separate trusts for the benefit of Child 4's children. The new trusts will terminate at the death of Child 4. Although it is not expected that additional children will be born to or adopted by Child 4 prior to her death, provision is made for that contingency. In that event, a trust would be created for the benefit of an afterborn child and funded with a pro rata distribution from the four trusts created out of Trust 4, so that the five trusts would be of equal value. The trust for the afterborn child would also be governed by the provisions of Decedent's will.

Provision is also made in case a grandchild of Decedent should predecease his or her parent who is a child of Decedent. In that case, the grandchild's separate trust will continue to be held in trust and administered under the terms of Decedent's will until his or her parent who is a child of Decedent dies. The trust will be subject, during the parent's life, to the provision regarding afterborn children of the parent. At the parent's death, the trust will terminate and be distributed in accordance with Item III(A)(5) of Decedent's will.

The Trustees will petition the local court in State to appoint guardians ad litem for the minor grandchildren of Decedent, any unborn (afterborn) grandchildren of Decedent, and any unborn descendants of a grandchild of Decedent who might predecease his or her parent who is a child of the Decedent; to make Decedent's children parties to the proceeding; and to approve the partition of Trust 1, Trust 2, Trust 3, and Trust 4 in the manner described above.

#### Ruling Request:

The Trustees have requested a ruling that the successor trusts to be created pursuant to the proposed partitions, and any successor trusts that may be created for afterborn children, will remain exempt from the application of the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

#### Law and Analysis:

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.

Under §1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax (GSTT) 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, 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). Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor held a power with respect to the trust that would have caused the value of the trust to be included in the settlor's gross estate for Federal estate tax purposes by reason of § 2038 or by reason of § 2042 if the settlor had died on 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.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GSTT 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 transfer or the creation of a new GST transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, provides that if the division of a 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 and 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, then the two partitioned trusts will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

In a previously issued private letter ruling, we concluded that: (1) Trust T was irrevocable on September 25, 1985; (2) if no additions were made to Trust T after September 25, 1985, transfers from Trust T would be exempt from the GSTT; and (3) Decedent's exercise of her testamentary limited power of appointment over her share of Trust T by creating Trust 1, Trust 2, Trust 3, and Trust 4 did not cause Trust T, Trust 1, Trust 2, Trust 3, or Trust 4 to lose its exempt status for GSTT purposes.

For purposes of the present case, it is represented that no additions (actual or constructive) were made to Trust T after September 25, 1985, and no additions (actual or constructive) were made to Trust 1, Trust 2, Trust 3, or Trust 4 since Decedent's death.

In this case, the proposed partitions of Trust 1, Trust 2, Trust 3, and Trust 4 by the Trustees will not result in a shift of any beneficial interest in either trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the division. Further, the proposed partitions will not extend the time for vesting of any beneficial interest in either trust beyond the period provided for in the original trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed partition of Trust 1 into three separate trusts, the proposed partition of Trust 2 into three separate trusts,

the proposed partition of Trust 3 into two separate trusts, and the proposed partition of Trust 4 into four separate trusts, will not cause either trust to lose its exempt status for generation-skipping transfer tax purposes. In addition, if successor trusts are created for afterborn children as described above, the new successor trusts will not be subject to the GSTT and will not cause the partitioned trusts to lose their exempt GSTT status.

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 the ruling, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The 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.

Sincerely yours,  
KATHERINE A. MELLODY  
Senior Technician Reviewer  
Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
Copy for section 6110 purposes