

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Re:

Refer Reply To:
CC:PSI:4-PLR-112613-00
Date: October 2, 2000

Legend

- Decedent =
- Daughter 1 =
- Daughter 2 =
- Trust =
- Grandchild 1 =
- Great Grandchild 1 =
- Great Grandchild 2 =
- Grandchild 2 =
- Great Grandchild 3 =
- Great Grandchild 4 =
- Local Court =
- Corporation 1 =
- Corporation 2 =

This is in response to your letter of June 19, 2000, in which your authorized representative requested a ruling concerning the generation-skipping transfer tax consequences of a proposed division of Trust.

Decedent died testate in 1938, survived by his two children, Daughter 1 and Daughter 2. Section IV of Decedent's will provides that all of the rest, residue, and remainder of his property is to be held in trust.

Section V provides that the trustee is to pay the trust's entire net income to Decedent's spouse. Upon the spouse's death, the trust is to be divided into two equal parts, one part for Daughter 1 and her children and the other for Daughter 2 and her children.

Section V further provides that the income from Daughter 1's share is to be distributed to her, quarterly, during her life. After Daughter 1's death, the income from her share is to be used for the support, education, and maintenance of the children of Daughter 1, share and share alike. The share maintained for Daughter 1 and her children is to terminate 20 years after the death of Daughter 1. At that time, all of the

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property of her share is to be distributed in fee simple absolute, share and share alike, to the children of Daughter 1. Except for the beneficiaries and the termination date, the share for Daughter 2 and her children has the same terms.

Section VI authorizes the trustee to invade trust corpus during the lifetime of Decedent's daughters to provide for their reasonable care and comfort.

Decedent's spouse had predeceased him and, therefore, when Decedent died, the trust was divided into two separate trusts, one for Daughter 1 and one for Daughter 2. The trust for Daughter 1 (Trust) and her children is the subject of this ruling request.

In 1967, Local Court construed Trust to provide that, upon the death of Daughter 1 and during the subsequent existence of Trust, all of the net income of the trust is to be distributed by the trustee, at convenient intervals, to or for the benefit of the then living children of Daughter 1 and, on a per stirpes basis, to or for the benefit of the descendants (i.e., heirs in the descending line) who are from time to time living, of any such children who are then deceased. Should a child of Daughter 1 survive Daughter 1 but die prior to the termination of Trust leaving one or more descendants, such descendant or descendants who are from time to time living shall be entitled to receive that share of the net income allocable to their deceased parent, in equal shares, on a per stirpes basis. If however, a deceased child of Daughter 1 shall leave no descendants, or having left a descendant or descendants surviving him or her, all such descendants shall have died prior to termination of Trust, then and in either of such events, the share which would have gone to such deceased child and/or such descendant or descendants shall be distributed to the other living children of Daughter 1, share and share alike, and on a per stripes basis, to the descendants of any deceased child of Daughter 1 who are living from time to time.

In addition, pursuant to the court order construing the Trust, if Daughter 1 is survived by one or more of her children and/or descendants of a deceased child or children, and any one or more of the children or descendants of a deceased child should be living on the 20th anniversary of Daughter 1's death, then the Trust shall terminate on the 20th anniversary of Daughter 1's death and the corpus is to be paid equally to the then living children of Daughter 1 and on a per stirpes basis to the living descendants of any deceased child or children of Daughter 1.

Daughter 1 had two children, Grandchild 1 and Grandchild 2, both of whom are now deceased. Grandchild 1 had two children, Great Grandchild 1 and Great Grandchild 2. Grandchild 2 had two children, Great Grandchild 3 and Great Grandchild 4.

Daughter 1 died on January 5, 1990, and therefore, Trust will terminate on January 5, 2010. When Trust terminates, the assets will be distributed, outright, to Great Grandchildren 1-4 or to their descendants, per stirpes, if any of them should die

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before January 5, 2010. Since Daughter 1's death, income from Trust has been distributed to Great Grandchildren 1-4 on a per stirpital basis.

Corporation 1 was designated as the trustee of Trust. Currently, Corporation 2 serves as the trustee of Trust.

The trustee and each of the great grandchildren propose to petition the Local Court to divide Trust into four equal, separate trusts, one for the benefit of each of Great Grandchildren 1-4 and his or her descendants. As proposed, the terms of Trust will continue to govern the new trusts except that the trust income from each new trust will be payable as provided in Trust, as construed by the 1967 court order, to the Great Grandchild for whom the trust is established and his or her descendants. Each new trust will terminate as provided in Trust, and on termination, the trust corpus will be distributed as provided in Trust, as construed by the 1967 court order.

The trustee has represented that there have been no additions to Trust after the death of Decedent in 1938.

The trustee has requested a ruling that the proposed division of Trust will not constitute an addition to Trust or otherwise subject the four new trusts resulting from the division of Trust to the generation-skipping transfer tax provisions of Chapter 13 of the Internal Revenue Code and will not cause the corpus of any of the four new trusts to be treated as if it had been added after September 25, 1985, to any of the trusts.

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip person." Section 2611 defines a generation-skipping transfer as a taxable termination, a taxable distribution, 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 generation-skipping transfer tax shall not apply to any generation-skipping 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)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, the Trust is considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 apply.

A modification of a trust that is otherwise exempt from the generation-skipping transfer tax under the Act will generally result in a loss of its exempt or "grandfathered" status if the modification changes the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the trust.

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In the present case, it has been represented that no additions have been made to Trust after September 25, 1985. After the division of the Trust into four separate trusts, the interests of the beneficiaries will remain the same and the timing of the termination of the resulting trusts will remain the same. Accordingly, the proposed division of Trust into four separate trusts, one each for Great Grandchild 1 and his family, Great Grandchild 2 and his family, Great Grandchild 3 and her family, and Great Grandchild 4 and his family will not change the quality, value, or timing of any powers, beneficial interests, rights, or expectancies originally provided for under the terms of the original trust.

Based on the information submitted and representations made, we conclude that the division of Trust into four separate trusts, pursuant to the Local Court Order as proposed, will not constitute an addition to Trust or otherwise subject the four trusts resulting from the division of Trust to the generation-skipping transfer tax provisions of Chapter 13 of the Code. Further, the proposed division will not cause the corpus of any of the four new trusts to be treated as if it had been added after September 25, 1985, to any of the trusts.

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.

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

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.

Sincerely yours,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: George Masnik, Chief, Branch 4

Enclosure (1)
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