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The facts and representations submitted are summarized as follows: Decedent died on Date 1, which is prior to September 25, 1985. Pursuant to Decedent's will, dated Date 2, and codicil, dated Date 3, a testamentary trust, Trust, was created for the primary benefit of Decedent's niece, Niece, Niece's children, and Decedent's brother, Brother. Brother predeceased Decedent. Decedent was survived by Niece and Niece's children, A, B, and C. The current trustees of Trust are Bank and Niece.

Paragraph 4 of the will provides, in part, that all income from Trust shall be paid by the trustees at such time, but not less than annually, as shall seem most convenient to them, as follows: (a) one half to Brother, so long as he shall live, and upon his death to the children (now living, or to be born hereafter) of Niece, share and share alike (b) one half to Niece, so long as she shall live, and upon her death to her children, share and share alike. Trust shall continue throughout the lifetime of Brother and Niece, and thereafter until the youngest child of Niece shall reach the age of twenty-five years; but, after the death of Brother and Niece, there shall be paid and distributed out of Trust corpus to each child of Niece, when he or she reaches the age of twenty-five years, an equal share of the corpus of Trust, thereby terminating his or her benefit under Trust. The current income beneficiaries of Trust are Niece, A, B, and C.

The trustees propose to partition Trust into four separate fractional interest subtrusts, one for each current beneficiary (individually, "Successor Trust" and collectively "Successor Trusts"). The partition will be pro rata in accordance with each beneficiary's respective interest in Trust. One half of the assets of Trust will be allocated to Niece's Successor Trust and one-sixth of the assets of Trust will be allocated to a Successor Trust for the benefit of each of A, B, and C. Trustees will continue to make current income distributions to Niece, A, B, and C pursuant to the terms of Trust and State Statute. Upon the death of Niece, each Successor Trust will terminate and be distributed according to the terms of Decedent's will.

State Statute provides that the court may sever any trust on a fractional basis into two or more separate trusts for any reason, and to segregate by allocation to a separate account or trust a specific amount from, a portion of, or a specific asset included in the trust property of any trust to reflect a disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirement, to make federal tax elections, to reduce potential generation-skipping transfer tax liability, or for any other tax planning purposes or other reasons.

The beneficiaries and trustees of Trust have entered into Agreement requesting and approving the judicial modification of Trust. The trustees have filed a complaint in Court to partition the Trust, as described above, and such partition is authorized under State law. On Date 4, Court issued an Order approving and directing severance of Trust and declaratory relief, as described above. However, the Order is effective only upon the issuance of a private letter ruling by the IRS.

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Trust was irrevocable on September 25, 1985. It is represented that no actual or constructive additions have been made to Trust after that date.

You have requested the following rulings:

1. The proposed partition of Trust into four Successor Trusts will not subject Trust, Successor Trusts or the distributions from any of these trusts to the GST tax under section 2601.
2. The proposed partition of Trust into four Successor Trusts will not result in a transfer by any beneficiary that is subject to the gift tax under section 2501.
3. The proposed partition of Trust into four Successor Trusts will not result in the recognition of gain or loss from the sale or other disposition of property by Trust, Successor Trusts or the beneficiaries of such trusts.
4. The holding period for assets allocated to each Successor Trust will be identical to the holding period of Trust for such assets.
5. The basis of each asset allocated to a Successor Trust will be identical to the Trust's basis in such asset.

Ruling 1

Section 2601 imposes a tax on each generation-skipping transfer made by a transferor to a skip person.

Under section 1433(a) of the Tax Reform Act of 1986, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under section 1433(b)(2)(A) of the Tax Reform Act and section 26.2601-1(b)(1)(i) of the regulations, the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date.

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 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 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 section 2651) than the person or persons who held the beneficial interest

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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 that does not result in an increase in the amount of a GST transfer or the creation of a new GST transfer will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(E), Example 5, involves a trust that is irrevocable on or before September 25, 1985. The trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and corpus to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust is to terminate and the corpus distributed to A's issue per stirpes. The terms of the trust for B and B's issue are identical except for the beneficiaries. The example concludes that the division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the division. In addition, 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. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In this case, Trust was irrevocable on September 25, 1985. It is represented that no additions have been made to Trust after that date. The proposed partition of Trust will result in four Successor Trusts, one for each current beneficiary. The proposed partition of Trust and pro rata allocation of assets among the four Successor Trusts will not shift a beneficial interest to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the division. Further, the partition will not extend the time for vesting of any beneficial interest 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 into four Successor Trusts will not subject Trust, Successor Trusts or the distributions from any of these trusts to the GST tax under section 2601.

Ruling 2

Section 2501(a) imposes a tax on the transfer of property by gift by an individual, resident or nonresident.

Section 2511(a) provides that the tax imposed by section 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible.

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Section 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

In this case, upon the partition of Trust into four Successor Trusts, each beneficiary of a Successor Trust will have the same beneficial interest as he or she had under Trust. Because the beneficial interests of the beneficiaries are substantially the same both before and after the proposed transaction, no transfer of property will be deemed to occur as a result of the partition. Accordingly, we conclude that the proposed partition of Trust into four Successor Trusts will not result in a transfer by any beneficiary that is subject to the gift tax under section 2501.

Rulings 3-5

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in section 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under section 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under section 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

A partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests but do not acquire a new or additional interest as a result of the transaction. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56- 437, 1956-2 C.B. 507.

Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), concerns the issue of when a sale or exchange has taken place that results in realization of gain or loss under section 1001. In Cottage Savings, a financial institution exchanged its interests in one group of residential mortgage loans for another lender's interests in a

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different group of residential mortgage loans. The two groups of mortgages were considered "substantially identical" by the agency that regulated the financial institution.

The Supreme Court of the United States in Cottage Savings, concluded that section 1.1001-1 reasonably interprets section 1001(a) and stated that an exchange of property gives rise to a realization event under section 1001(a) if the properties exchanged are "materially different." In defining what constitutes a "material difference" for purposes of section 1001(a), the Court stated that properties are "different" in the sense that is "material" to the Code so long as their respective possessors enjoy legal entitlements that are different in kind or extent. Cottage Savings, 499 U.S. at 564-65. The Court held that mortgage loans made to different obligors and secured by different homes did embody distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans. Cottage Savings, 499 U.S. at 566.

Section 1015(b) provides that if property is acquired by a transfer in trust (other than a transfer in trust by gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by transfer in trust by gift, bequest, or devise) the basis of property so acquired is the same as it would be in the hands of the grantor increased by the amount of gain or decreased by the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. In addition, the principles in section 1.1015-1(b) concerning the uniform basis are applicable in determining the basis of property where more than one person acquires an interest in property by transfer in trust. Section 1.1015-1(b) provides that property acquired by gift has a single uniform basis although more than one person may acquire an interest in the property. The uniform basis of the property remains fixed subject to proper adjustment for items under sections 1016 and 1017.

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included in the period for which such property was held by any other person, if the property has the same basis in the taxpayer's hands as it would have in the hands of that other person.

The proposed partition is consistent with the Supreme Court's opinion in Cottage Savings to find that the interests of the beneficiaries of the Successor Trusts will not differ materially from their interests in the Trust. Pursuant to the Court's Order, Trust will be divided on a pro rata basis. All of the provisions of Trust will remain unchanged. Accordingly, the proposed transaction will not result in a material difference in kind or extent of the legal entitlements enjoyed by the beneficiaries, and no gain or loss is

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recognized by the beneficiaries or the trusts on the partition for purposes of section 1001.

Because section 1001 does not apply to the partition of Trust, under section 1015 the basis of the assets will be the same after the partition as the basis of those assets before the partition. Furthermore, pursuant to section 1223(2) the holding periods of the assets in the hands of Successor Trusts will include the holding periods of the assets in the hands of the Trust.

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 taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: