

Internal Revenue Service

Number: **200543047**

Release Date: 10/28/2005

Index Number: 2601.01-00, 1001.02-07

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-143955-02

Date: JULY 13, 2005

In Re:

LEGEND:

Decedent =

Trustee =

Daughter =

Grandson =

Granddaughter =

GGC1 =

GGC2 =

GGC3 =

GGC4 =

Date 1 =

Date 2 =

Date 3 =

Order =

County Court =

State =

Trust A =

Trust B =

Trust C =

Trust D =

Dear :

This is in response to your April 12, 2004 letter and other correspondence requesting a ruling concerning the federal income and generation-skipping transfer tax consequences of the proposed modification of the trust.

You have requested the following rulings:

1. The partition of Trust D pursuant to the Order will not cause Trust D or any Subtrust to become subject to the provisions of the generation-skipping transfer tax (GST).
2. The partition of Trust D pursuant to the Order will not cause Trust D or any beneficiary thereof to realize gain or loss under section 61 or 1001 of the Internal Revenue Code.
3. The partition of Trust D pursuant to the Order will not cause Trust D or any Subtrust or beneficiary thereof to realize any gain or loss under section 661.
4. The division of each Subtrust of Trust D into a Life Estate Portion and a Remainder Portion will not cause any Subtrust to become subject to the provisions of the GST.
5. The division of each Subtrust of Trust D into a Life Estate Portion and a Remainder Portion will not cause any Subtrust or any beneficiary of Trust D to realize gain or loss under section 61 or 1001.
6. The division of each Subtrust of Trust D into a Life Estate Portion and a Remainder Portion will not cause any Subtrust or beneficiary thereof to realize any gain or loss under section 661.
7. The Five Year Redeterminations of the Life Estate Portion and the Remainder Portion of each Subtrust of Trust D will not cause any Subtrust to become subject to the provisions of the GST.
8. The Five Year Redeterminations of the Life Estate Portion and the Remainder Portion of each Subtrust of Trust D will not cause any Subtrust or any beneficiary of Trust D to realize gain or loss under section 61 or 1001.
9. The Five Year Redeterminations of the Life Estate Portion and the Remainder Portion of each Subtrust of Trust D will not cause any Subtrust or beneficiary thereof to realize any gain or loss under section 661.
10. The addition of the HEMS Principal Invasion Power to the terms of Trust D and the application of the HEMS Principal Invasion Power to the Life Estate Portion of each Subtrust of Trust D during the life of the Great-Grandchild beneficiary thereof will not cause said Subtrust to become subject to the provisions of the GST.
11. The addition of the HEMS Principal Invasion Power to the terms of Trust D and the application of the HEMS Principal Invasion Power to the Life Estate Portion of

each Subtrust of Trust D during the life of the Great-Grandchild beneficiary thereof will not cause any beneficiary of Trust D to realize gain or loss under section 61 or 1001.

12. The trust modification that requires that no invasion of principal from the Remainder Portion of a Subtrust of Trust D can be made until the principal of the Life Estate Portion thereof is exhausted, will not cause any Subtrust to become subject to the provisions of the GST.
13. The trust modification that requires the application of the HEMS Principal Invasion Power to a Subtrust upon the death of the Great-Grandchild beneficiary thereof will not cause said Subtrust to become subject to the provisions of the GST.
14. The trust modification that requires the application of the HEMS Principal Invasion Power to a Subtrust upon the death of the Great-Grandchild beneficiary thereof will not cause any beneficiary of Trust D to realize gain or loss under section 61 or 1001.

The facts and representations submitted are summarized as follows:

Decedent died on Date 1 (before September 25, 1985). Article Four of her will provides that the residue of her estate will be divided among four trusts, Trust A, Trust B, Trust C, and Trust D. Trustee is the trustee of all four trusts.

The will provides for Trust A to receive Decedent's stock in certain corporations and an undivided one-fourth interest in the Decedent's residuary estate. The will provides that Trustee is required to pay all of Trust A's income to Daughter for her life. Daughter died on Date 2. After Daughter's death, the assets of Trust A were distributed in equal shares to Trust B and Trust C, in accordance with the provisions of Decedent's will.

Trust B received an undivided one-fourth interest in the Decedent's residuary estate. The will provides that Trustee is required to pay for the benefit of Grandson all of the net income of Trust B. Upon the death of Grandson, Trust B will terminate and the assets of Trust B will pass and be distributed to Trust D.

Trust C received an undivided one-fourth interest in the Decedent's residuary estate. The will provides that Trustee is required to pay for the benefit of Granddaughter all of the net income of Trust C. Upon the death of Granddaughter, Trust C will terminate and the assets of Trust C will pass and be distributed to Trust D.

Trust D received an undivided one-fourth interest in Decedent's residuary estate for the benefit of Decedent's great-grandchildren.

Section A of Trust D provides that during the existence of Trust D, Trustee shall be authorized to pay to or for the benefit of Decedent's great-grandchildren and/or their successors in interest, all or any part of the net income of Trust D, in such proportions as said Trustee, in its sole discretion, deems necessary or desirable. Section A further provides that although Decedent generally desires to treat her great-grandchildren in a substantially equal manner, Decedent realizes that unequal distributions may be desirable in order that beneficiaries are treated fairly and equitably, considering other benefits and sources of funds available to said beneficiaries.

Section C of Trust D provides that the phrase "successors in interest" shall mean that upon the death of any of Decedent's great-grandchildren, he or she shall be succeeded as beneficiaries of Trust D by his or her surviving lineal descendants (including legally adopted descendants), per stirpes and not per capita representation.

Section D of Trust D provides that Trust D will continue until twenty-one years after the death of the last survivor of Decedent's great-grandchildren as were living at the time of Decedent's death.

Section E of Trust D provides that upon the termination of Trust D, Trustee will distribute the remaining assets among the surviving great-grandchildren, if any, and the surviving successors in interest of Decedent's great-grandchildren who are deceased.

The will provides that during the existence of any trust created by the will, Trustee may from time to time invade the principal of any such trust for the benefit of any of its income beneficiaries if, in the sole and absolute discretion of Trustee, such invasion is necessary or desirable to meet a serious health or other financial emergency or such beneficiary. (This invasion power is known as the Emergency Principal Invasion Power).

The will also provides that the Trustee is authorized to hold, sell, convey, exchange, repair, replace, invest, reinvest, encumber, mortgage, lease, manage, or otherwise handle, use and dispose of all or any part of the assets of any trust created by the will, with all the powers of an absolute and sole owner, but for the uses and purposes of administering the trust. For the purpose of administering any trust created by the will, the Trustee may hold all or any part of the assets received or held in trust in undivided interests, with the trust having an undivided interest in such assets, or the Trustee may make actual, physical division of all or any part of the assets, as the Trustee may think proper or advisable. The Trustee may make any distribution contemplated by this instrument in the same manner, and/or may sell all or any portion of the assets to facilitate any distribution.

On Date 3, County Court issued an Order that deleted the current provisions of Trust D contained in Article Four of the Will and provided that the following provisions be inserted in its place:

The Trustee is to partition Trust D into four separate share trusts (Subtrusts), one for the exclusive benefit of each of Decedent's great-grandchildren, and for the great-grandchild beneficiary's successors in interest. Any and all assets passing and distributed to Trust D from Trust B and Trust C are to be divided equally among the then existing Subtrusts.

Each Subtrust is to be initially be divided by the Trustee into two portions based on the Internal Revenue Service actuarial factors in effect on the date of the division. The actuarial factors to be utilized in determining the two portions of a Subtrust are to be those actuarial factors applicable to a person who on the date such Subtrust was created is the age of the great-grandchild who is the original beneficiary of such Subtrust. One portion, the Life Estate Portion, is to be determined by multiplying the principal of each Subtrust by the actuarial life estate factor for the great-grandchild beneficiary of that Subtrust on the date such trust is created. The Trustee is to allocate to the Life Estate Portion of each Subtrust such assets, including undivided interests in assets, as the Trustee designates in its discretion, that equal the amount resulting from the above multiplication. The other portion of each Subtrust, the Remainder Portion, is to be determined by multiplying the principal of each Subtrust by the actuarial remainder factor for the great-grandchild beneficiary of that Subtrust on the date such trust is created. The Trustee is to allocate to the Remainder Portion of each Subtrust such assets, including undivided interests in assets, as the Trustee designates in its discretion, that equal the amount resulting from the above multiplication. Upon the death of the great-grandchild beneficiary, during the existence of the Subtrust, the Life Estate Portion and the Remainder Portion are to be combined and thereafter cease to be separately accounted for or administered.

Subject to the prohibition against the reflation of the Life Estate Portion of any Subtrust, the allocation of principal between the Life Estate Portion and the Remainder Portion of each Subtrust is to be made by the Trustee on each five year anniversary date on which the Subtrust was created for so long as the great-grandchild beneficiary is alive. Each Five Year Redetermination made in connection with a Subtrust is to be based on the Internal Revenue Service actuarial factors in effect on the date of the allocation for a person who on the date of the Five Year Redetermination is the age of the great-grandchild beneficiary of the Subtrust. After a Five Year Redetermination is made in connection with a Subtrust, the Trustee is to transfer such assets or interests from the Life Estate Portion of such Subtrust to the Remainder Portion of the Subtrust as the trustee in his discretion considers appropriate to comply with the principal reallocation required by the Five Year Redetermination. Upon the death of the great-grandchild beneficiary, during the existence of a Subtrust, the Life Estate Portion and the Remainder Portion are to be combined and thereafter cease to be separately accounted for or administered.

If a Five Year Redetermination would cause the principal in the Life Estate Portion of any Subtrust to be greater than the amount of principal that was in the Life Estate Portion immediately before the Five Year Redetermination, then in that event:

(a) the amount of principal in such Life Estate Portion is to remain what it was immediately before the Five Year Redetermination; and (b) the amount of principal that would otherwise be included in the Remainder Portion of the Subtrust as a result of the Five Year Redetermination is to be increased by the amount of principal that would have been included in the Life Estate Portion of such separate share trust but for the application of this provision prohibiting the reflation of the Life Estate Portion.

Section A of each Subtrust provides that the Trustee is authorized to pay to or for the benefit of the great-grandchild beneficiary and/or his successors in interest, all or any part of the net income of the Subtrust, in such proportions as the Trustee, in its sole discretion, deems necessary or desirable. The Trustee has full and complete authority to determine the income share of any beneficiary of the Subtrust.

Section B of each Subtrust provides that during the period of time as any beneficiary to whom distributions of income of the Subtrust are either directed or permitted to be made is under legal disability or in the opinion of the Trustee is unable to properly administer such distributions, the Trustee may make the distributions in any of the following ways as the Trustee may desire: (i) directly to such beneficiary; (ii) to the legal guardian or conservator of such beneficiary; (iii) to any relative of such beneficiary to be expended by such relative for the support, education, and welfare of the beneficiary; or (iv) by the Trustee expending such income for the support, education, and welfare of the beneficiary.

Additionally, Section B of the Subtrusts of GGC1 and GGC2 provide that it is expressly provided that the Trustee is not to distribute any income for the benefit of the great-grandchild beneficiary by means of payment to the mother of GGC1 and GGC2, but the trustee is authorized to make payments to the great-grandchild beneficiary in any other manner above authorized.

Section C of each Subtrust provides that the phrase "successors in interest" means that upon the death of the great-grandchild beneficiary, the beneficiary will be succeeded by his surviving lineal descendants (including legally adopted descendants), per stirpes and not per capita. In the event that the great-grandchild beneficiary is not survived by lineal descendants, all principal and income of the Subtrust is to be divided and distributed equally among the other Subtrusts of Trust D for the benefit of Decedent's other great-grandchildren and their successors in interest.

Section D of each Subtrust provides, in part, that the Subtrust will continue until 21 years after the death of the last survivor of Decedent's great-grandchildren who were alive at the time of Decedent's death.

Section E of each Subtrust provides that upon termination, the Trustee will pay any remaining indebtedness in the Subtrust and will then distribute the remaining assets to the successors in interest of the great-grandchild beneficiary.

Section F of each Subtrust provides that during the existence of the Subtrust, the Trustee may from time to time invade the principal of the Life Estate Portion of the Subtrust for the benefit of any of its income beneficiaries if, in the sole and absolute discretion of the Trustee, the invasion is necessary or desirable to meet the health, education, maintenance or support (HEMS) needs of such beneficiaries. (This invasion power is known as the HEMS Principal Invasion Power.) If the principal of the Life Estate Portion is insufficient to meet the HEMS needs of the beneficiaries, then the Trustee may from time to time also invade the principal of the Remainder Portion of the Subtrust for the benefit of any of its income beneficiaries if, in the sole and absolute discretion of the Trustee, the invasion is necessary or desirable to meet a serious health or other financial emergency of the beneficiaries. During the life of the great-grandchild beneficiary, no invasion of the principal of the Remainder Portion may be made unless and until the principal of the Life Estate Portion has been exhausted. Upon the death of the great-grandchild beneficiary and upon the continuation of the Subtrust for his successors in interest, the Life Estate Portion and the Remainder Portion of each Subtrust are to be combined by the Trustee into a single trust account, and the Trustee may thereafter from time to time invade the principal of the entire Subtrust for the benefit of any of its income beneficiaries if, in the sole and absolute discretion of the Trustee, the invasion is necessary or desirable to meet the HEMS needs of the beneficiaries.

There are currently four great-grandchildren of Decedent. GGC1 and GGC2 are the children of Grandson. GGC3 and GGC4 are the children of Granddaughter. GGC1, GGC2, and GGC3 were living at the time of Decedent's death, and GGC4 was born after Decedent's death.

Ruling 1

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under section 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under section 1433(a) of the Tax Reform Act of 1986 (Act) and section 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax (GST) is generally applicable to generation-skipping transfers made after October 22, 1986. However, under section 1433(b)(2)(A) of the Act and section 26.2601-1(b)(1)(i), 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).

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 under section 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 GST 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 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 generation-skipping transfer or the creation of a new generation-skipping transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST is divided into two trusts. Under the facts presented, 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 section 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. Accordingly, the two partitioned trusts will not be subject to the provisions of chapter 13.

In this case, the proposed partition of Trust D by Trustee will not result in a shift of any beneficial interest in Trust D or the Subtrusts to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed partition will not extend the time for vesting of any beneficial interest in the Subtrusts beyond the period provided for in Trust D. Therefore, based solely on the facts submitted and the representations made, we conclude that the partition of Trust D pursuant to the Order will not cause Trust D or any Subtrust to become subject to the provisions of the GST.

Rulings 2, 5, 8, 11, and 14

Section 61(a)(3) provides that gross income includes gains derived from dealings in property and, under section 61(a)(15), from an interest in a trust.

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 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 in Cottage Savings, 499 U.S. at 560-61, 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. Id. at 564-64. 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. Id. at 566.

It is consistent with Cottage Savings to find that the interests of the beneficiaries of the Subtrusts of Trust D will not differ materially from their interests in Trust D. In the proposed transaction, Trust D will be severed in accordance with the Order of County Court on a pro rata basis. The proposed modifications will not result in a shift in beneficial ownership of any Subtrust assets. Each Great-grandchild and his or her successors in interest will continue to be the full beneficial owners of the assets of their corresponding Subtrust. Except for the changes described above, all other provisions of the Subtrusts will remain unchanged from the provisions of Trust D. Accordingly, neither the proposed partition nor the proposed modifications will result in a material difference in kind or extent of the legal entitlements enjoyed by the beneficiaries.

Therefore, based solely on the facts submitted and the representations made, we conclude as follows:

The partition of Trust D pursuant to the Order will not cause Trust D or any beneficiary thereof to realize gain or loss under section 61 or 1001;

The division of each Subtrust of Trust D into a Life Estate Portion and a Remainder Portion will not cause any Subtrust or any beneficiary of Trust D to realize gain or loss under section 61 or 1001;

The Five Year Redeterminations of the Life Estate Portion and the Remainder Portion of each Subtrust of Trust D will not cause any Subtrust or any beneficiary of Trust D to realize gain or loss under section 61 or 1001;

The addition of the HEMS Principal Invasion Power to the terms of Trust D and the application of the HEMS Principal Invasion Power to the Life Estate Portion of each Subtrust of Trust D during the life of the Great-Grandchild beneficiary thereof will not cause any beneficiary of Trust D to realize gain or loss under section 61 or 1001; and

The trust modification that requires the application of the HEMS Principal Invasion Power to a Subtrust upon the death of the Great-Grandchild beneficiary thereof will not cause any beneficiary of Trust D to realize gain or loss under section 61 or 1001.

Rulings 3, 6, and 9

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year.

Section 1.661(a)-2(f)(1) of the Income Tax Regulations provides that if property is paid, credited, or required to be distributed in kind, no gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of the distribution, unless the distribution is in satisfaction of a right to receive a distribution in a specific dollar amount or in specific property other than that distributed.

Section 662(a) provides that there shall be included in the gross income of a beneficiary to whom an amount specified in section 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts: (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Section 643(b) provides that, for purposes of subparts A through D, part I, subchapter J, chapter 1, the term "income," when not preceded by the words "taxable," "distributable net," or gross," means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable

local law. Items of gross income constituting extraordinary dividends or taxable stock dividends that a fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law are not considered income. Section 1.643(b)-1 provides, however, that trust provisions that depart fundamentally from concepts of local law in the determination of what constitutes income are not recognized.

Therefore, based solely on the facts submitted and the representations made, we conclude as follows:

The division of Trust D into four Subtrusts is not a distribution under section 661 or section 1.661(a)-2(f)(1) and will not result in the realization by Trust D, its Subtrusts, or by any beneficiary of Trust D or of each Subtrust of any income, gain, or loss;

The division of each Subtrust of Trust D into a Life Estate Portion and a Remainder Portion is not a distribution under section 661 or section 1.661(a)-2(f)(1) and will not result in the realization by each Subtrust of Trust D, or by any beneficiary of Trust D of any income, gain, or loss; and

The Five Year Redeterminations of the Life Estate Portion and the Remainder Portion of each Subtrust of Trust D are not distributions under section 661 or section 1.661(a)-2(f)(1) and will not result in the realization by each Subtrust of Trust D, or by any beneficiary of each Subtrust of Trust D of any income, gain, or loss under section 661 or section 1.661(a)-2(f)(1).

Rulings 4 and 7

Section 26.2601-1(b)(4)(i)(E), Example 10, considers a situation where a trust is modified by decreasing the number of trustees. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation than the person or persons who held the beneficial interest prior to the modification. In addition, 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. Therefore, the modification will not subject the trust to the provisions of chapter 13.

In this case, the proposed division of the Subtrusts of Trust D into a Life Estate Portion and a Remainder Portion and the Five Year Redetermination of those Life Estate and Remainder Portions are modifications that pertain to the administration of the Subtrust. These provisions allow the Trustee to determine which part of the Subtrust is subject to the HEMS Principal Invasion Standard and which part of the Subtrust is subject to the Emergency Principal Invasion Standard of the original Trust.

The proposed modifications will not result in a shift of any beneficial interest in Trust D or the Subtrusts to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed modifications will not extend the time for vesting of any beneficial interest in the Subtrusts beyond the period provided for in Trust D.

Therefore, based solely on the facts submitted and the representations made, we conclude that:

The division of each Subtrust of Trust D into a Life Estate Portion and a Remainder Portion will not cause any Subtrust to become subject to the provisions of the GST; and

The Five Year Redeterminations of the Life Estate Portion and the Remainder Portion of each Subtrust of Trust D will not cause any Subtrust to become subject to the provisions of the GST;

Rulings 10, 12, and 13

In this case, the Trustee proposes to expand the principal invasion standard for the Life Estate Portion to the HEMS Principal Invasion Standard, while the great-grandchild beneficiary is alive. The remaining portion of the trust will continue to be subject to the Emergency Principal Invasion Standard of the original Trust. The Trustee also proposes to prohibit invasion of principal from the Remainder Portion of a Subtrust of Trust D until the principal of the Life Estate Portion is exhausted. After the death of the great-grandchild beneficiary, the HEMS Principal Invasion Standard will apply to the full trust.

The proposed modifications will not result in a shift of any beneficial interest in Trust D or the Subtrusts to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed modifications will not extend the time for vesting of any beneficial interest in the Subtrusts beyond the period provided for in Trust D.

Therefore, based solely on the facts submitted and the representations made, we conclude that:

The addition of the HEMS Principal Invasion Power to the terms of Trust D and the application of the HEMS Principal Invasion Power to the Life Estate Portion of each Subtrust of Trust D during the life of the Great-Grandchild beneficiary thereof will not cause said Subtrust to become subject to the provisions of the GST;

The trust modification that requires that no invasion of principal from the Remainder Portion of a Subtrust of Trust D can be made until the principal of the

Life Estate Portion thereof is exhausted, will not cause any Subtrust to become subject to the provisions of the GST; and

The trust modification that requires the application of the HEMS Principal Invasion Power to a Subtrust upon the death of the Great-Grandchild beneficiary thereof will not cause the Subtrust to become subject to the provisions of the GST.

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

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. In particular, no opinion is expressed or implied concerning the gift tax consequences of this proposed partition and modification.

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.

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 yours,

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

Enclosure:

Copy of letter for section 6110 purposes