Internal Revenue Service

Department of the Treasury

Index Numbers: 2511-00.00,2601-00.00
1001-00.00, 1015-00.00

Number: **200037015**
Release Date: 9/15/2000

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4-PLR-103983-00
Date:
June 5, 2000

Re:

Legend
A =
B =
Child A =
Child B =
Child C =
Child C1 =
Child C2 =
Child C3 =
Trust D =

Trust D-C2 =

Trust D-C3 =

Trust D-C1/C2 =

Trust D-C1/C3 =

Dear :

This is in response to your letter dated February 1, 2000, and prior correspondence submitted on behalf of the trustees and trust beneficiaries requesting income tax and generation-skipping transfer tax rulings concerning the merger of identical trusts.

A and B, both deceased, had three children: Child A, Child B, and Child C. In 1951, Child B created and funded an irrevocable trust, Trust D, for the lifetime benefit of Child C's children (Child C1, Child C2, and Child C3). Under the terms of Trust D, three identical trusts were created: Trust D-C1 for Child C1, Trust D-C2 for Child C2, and Trust D-C3 for Child C3. Upon the death of either Child C1, C2, or C3, the trust for the deceased child is to be divided into separate trusts for the child's issue, per stirpes, or, if none, the trust shall be held for the benefit of the survivors of Child C1, C2, or C3.

Child C1 died in 1971 and was not survived by issue. According to the terms of Trust D-C1, the trust was divided into two trusts, Trust D-C1/C2 to be held under terms identical to Trust D-C2 for the benefit of Child C2, and Trust D-C1/C3 to be held under terms identical to Trust D-C3 for the benefit of Child C3. Since the death of C1, the provisions governing Trust D-C1/C3 have been identical to the provisions governing Trust D-C3, including present and future beneficiaries, distribution standards, trustee provisions, trustee powers, and termination provisions. The trustees propose to merge Trust D-C1/C3 into Trust D-C3.

The trustees intend to petition the appropriate state court to (1) determine that each trust proposed to be merged is identical, and (ii) order the consolidation of the trusts upon receipt of a favorable private letter ruling.

It is represented that there have been no additions to the subject trusts, constructive or otherwise, after September 25, 1985.

The following rulings have been requested:

1. The trusts were irrevocable on September 25, 1985, and are not subject to the generation-skipping transfer tax by reason of § 1433(b)(2)(A) of the Tax Reform Act of 1986.

2. The merger will not constitute an addition to the surviving trust nor cause a change in the substance of the surviving trust that will cause the surviving trust to lose its exempt status under § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations.

3. The merger does not constitute a gift by the trust beneficiaries for purposes of § 2511 of the Internal Revenue Code.

4. Neither the merger nor the distribution of assets to the surviving trust will result in recognition of gain or loss to any trust or the beneficiary of any trust.

5. Assets of the merged trusts will have the same basis and holding periods under §§ 1015 and 1223 in the surviving trust afer the merger as they did prior to the merger.

Ruling Requests 1-3

Section 2501(a)(1) imposes a gift tax on the transfer of property by gift. Section 2511(a) provides that the gift tax shall apply 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.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) 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)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust that is otherwise exempted from the application of Chapter 13 by § 1433(b)(2)(A) of the Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of Chapter 13.

In general, any modification of an irrevocable trust that results in a change in the quality, value, or timing of any interest in the trust will cause the trust to lose exempt status.

In the present situation, after the merger there will be no change in the dispositive provisions with respect to the property previously held in each particular trust. The trustees will hold the same property after the merger, and the interests of all beneficiaries will be unchanged. The surviving trust will terminate at the same time as provided with respect to each separate trust prior to the merger. Thus, the proposed merger of the trusts as described will not effect the quality, value, or timing of any beneficial interest under the original trusts. Accordingly, we conclude that, based on the representations made, all the trusts were irrevocable on September 25, 1985, and are not subject to the generation-skipping transfer tax by reason of § 1433(b)(2)(A) of the Act. Further, we conclude that the mergers as described will not constitute an addition to any surviving trust and will not otherwise cause any surviving trust to lose exempt status under § 26.2601-1(b)(1)(i). Lastly, we conclude that the mergers do not constitute gifts by the trust beneficiaries for purposes of § 2511.

Ruling Requests 4 and 5

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 § 1011 for determining gain, and the loss shall be the excess of the adjusted basis over the amount realized. Section 1001(c) provides that, except as otherwise provided in Subtitle A, the entire amount of gain or loss determined under § 1001 on the sale or exchange of property shall be recognized.

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

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. Cottage Savings Association v. Commissioner, 499 U.S. 554 (1991). There is a material difference when the exchanged properties embody legal entitlements "different in kind or extent" or if they confer "different rights and powers." Cottage Savings, 499 U.S. at 565.

In this case, the merger of Trust D-C1/C3 into Trust D-C3 (surviving trust) will not constitute a sale or other disposition for purposes of § 1001. The interests of the beneficiaries before and after the mergers remain the same because each trust has the same beneficiaries and identical terms. The exchanged properties are not materially different because they do not embody legal entitlements that are different in kind or confer different rights and powers.

We conclude that neither the merger nor the distribution of assets to the surviving trust will result in recognition of gain or loss to any trust or the beneficiary of any trust.

Section 1015(b) provides that if property is acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by gift, bequest, or devise), the basis is 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 the transfer under the law applicable to the year in which the transfer is made.

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 in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by transfer in trust, this basis applies whether the property be in the hands of the trustee, or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Section 1223(2) of the Code provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included in the period for which the property was held by any other person, if under chapter 1 such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of such other person.

We conclude that the basis of the assets in the surviving trust will be same as the basis of those assets in the original trusts before the merger. Accordingly, we conclude that the assets in the surviving trust after the proposed merger in this case will have the same holding periods as they had prior to the merger.

Except as we have ruled under the cited provisions of the Code, we express no opinion about the tax consequences of the proposed transaction under those provisions or under any other provisions of the Code.

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

Sincerely yours,
Assistant Chief Counsel
(Passthroughs and Special Industries)
By Robert Honigman
Acting Assistant to the Branch Chief

Enclosure
Copy for 6110 purposes