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Person To Contact:
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Refer Reply To:
CC:PSI:B04
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Date:
June 17, 2008

Re:

Legend

Grantor =
Daughter =
Child 1 =
Child 2 =
Child 3 =
Date 1 =
Trust =

Will =
Bank =
Agreement =
Court =

State Statute =

Dear :

This is in response to correspondence requesting a ruling regarding the gift and generation-skipping transfer (GST) tax consequences of a proposed modification of Trust.

The facts submitted and representations made are as follows. Grantor died on Date 1, a date prior to September 25, 1985, survived by sons and Daughter. Daughter has three living children, Child 1, Child 2 and Child 3. Under Paragraph Ninth of Grantor's Will, Grantor created a testamentary trust (Trust) for the primary benefit of

Daughter and her descendants. Trust was funded with marketable securities. Bank and Daughter are co-trustees of Trust.

Will provides that the trust residue is to be divided into separate portions, one portion for each of Grantor's children. Paragraph Ninth creates Trust for the benefit of Daughter and her descendants.

Paragraph Ninth, section A, provides that during the life of Daughter, Trustees will pay to or for the benefit of the children of Daughter's children, so much of the entire net income form said trust estate as, in the opinion of the Trustees, is necessary or desirable to maintain, support and educate such children in a manner and standard to which such children have raised in their parent's home.

Paragraph Ninth, section B, provides that any income which has not been paid in any calendar year will be added to corpus.

Paragraph Ninth, section C, provides that Trustee has the discretion to distribute principal to Daughter's children for any emergency such as illness or other misfortune which in the opinion of Trustees renders such child's income from all other sources insufficient for the proper housing care, support, maintenance, or education of the child.

Paragraph Ninth , section D, provides that Daughter has the power in each calendar year to receive from principal such sum as she requests but the total value of the property received in any calendar year cannot exceed $5,000 or five percent of the principal, whichever is greater.

Paragraph Ninth, section E, provides that upon Daughter's death, the Trustees are to divide the remaining Trust property into equal shares for Daughter's children, with the issue of a deceased child taking the parent's share per stirpes. After certain adjustments, Trustees are to distribute the shares to Daughter's children, or a deceased child's children per stirpes.

Daughter, Child 1, Child 2 and Child 3, would like to reform Trust and direct Trustees to divide assets equally among the three successor trusts, one trust for the benefit of Child 1, one trust for the benefit of Child 2 and one Trust for the benefit of Child 3. In all other respects the provisions of the new trusts will be identical to those of Trust. Daughter and Child1, Child 2, and Child 3, propose to enter into Agreement to modify Trust and request approval of Agreement from Court.

You have requested a ruling that after the proposed modification to Trust, the successor trusts will continue to be exempt from the GST tax under chapter 13 of the Internal Revenue Code.

Section 2601 imposes a tax on each generation skipping transfer. Under section 1433(b)(2)(A) of the Tax Reform Act of 1986 Act and § 26.2601-1(b)(1)(I) of the Generation-Skipping Transfer Tax Regulations, 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 the 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) of the Generation-Skipping Transfer Tax Regulations provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in § 26.2601-1(b)(1)(ii)(B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

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 will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraph (b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, but only if B

> (1) 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
>
> (2) 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.

State Statute provides that the court, on petition of an interested person, may approve a modification, or other settlement that is agreed upon in writing by all presently identified and competent beneficiaries whose interests in the trust may be affected to resolve a contest, controversy, or question of construction or interpretation concerning the existence, administration, or termination of an irrevocable trust.

Based on the facts presented and representations made, we conclude that if Trust is judicially modified as described above, the modification will not shift any beneficial interest in 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 modification. In addition, the modification of Trust will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trust. Accordingly, based on the facts submitted and the representations made, the modification of Trust will not cause Trust or the new trusts for the benefit of Child 1, Child 2, and Child 3 to be subject to the generation-skipping transfer tax imposed by chapter 13 of the Internal Revenue Code.

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. Specifically, we express no opinion on the gift tax consequences of the proposed transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

James F. Hogan
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes

cc: