Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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Date: NOVEMBER 09, 2009

Legend

Trust 1	=	
Date 1	=	
Grantor 1	=	
Original Trust 1	=	
Beneficiary	=	
Spouse	=	
Bank	=	
Date 2	=	
Trust 2	=	
Date 3	=	
Grantor 2	=	
Original Trust 2	=	
Grantor 1's Father	=	
Individual 1	=	
Individual 2	=	

Dear :

This responds to your authorized representative's letter dated July 30, 2009, and subsequent correspondence, in which you request rulings concerning the generation-skipping transfer (GST) tax consequences of proposed distributions from two trusts to four new trusts.

Trust 1

On Date 1 (before September 25, 1985), Grantor 1 created Original Trust 1 for the primary benefit of Grantor 1's son, Beneficiary, and Beneficiary's children.

The provisions of Original Trust 1 are as follows. Article Third provides that the net income of the trust, in the sole and absolute discretion of the trustee and without any requirement to observe any precept or rule of equality, may be paid to or for the benefit of any one or more or none of the class of persons consisting of Grantor 1's Spouse and the children and grandchildren of Grantor 1 (which includes Beneficiary and Beneficiary's children) and two other individuals who are deceased. Any net income not so paid or applied shall be accumulated and added to the trust estate.

Article Fourth provides that at any time during the term of the trust, the trustee may in its sole and absolute discretion pay over all or part of the trust estate to or for the benefit of Grantor 1's Spouse or Beneficiary or the children of Beneficiary.

Article Fifth provides that the trust shall terminate when the youngest of Grantor 1's children living on Date 1 shall have attained 30 years of age or when Grantor 1's Spouse shall have died whichever last occurs.

Article Sixth provides that upon termination, the trustee shall pay and distribute the trust estate and any accumulated income to Beneficiary, if living. If Beneficiary is not then living, the trustee shall pay and distribute the trust estate and any accumulated income to the child or children of Beneficiary in equal shares, but if there are none then to Grantor 1's issue, then living, per stirpes.

Original Trust 1 was irrevocable on September 25, 1985. It is represented that no additions were made to the trust since its creation on Date 1. The trustee of the trust is Bank.

On Date 2, pursuant to Article Fourth of Original Trust 1, Bank, as trustee, exercised its power to transfer trust principal of Original Trust 1 to Trust 1. It is represented that but for this distribution from Original Trust 1 to Trust 1, no contributions or additions have been made to Trust 1.

The provisions of Trust 1 are as follows. Article Third provides that during the term of the trust, the net income or all of it, in the sole and absolute discretion of the trustee and without any requirement to observe any precept or rule of equality, may be paid to or for the benefit of any one or more of the class of persons consisting of Beneficiary and his children. Any net income not so paid over or applied shall be accumulated and added to the trust estate.

Article Fourth provides that, at any time during the term of the trust, the trustee may, in the exercise of sole and absolute discretion, pay over all or part of the trust estate to or for the benefit of Beneficiary or the children of Beneficiary.

Article Sixth provides that the trust shall terminate when the youngest of Grantor 1's children living on Date 1 shall have attained 30 years of age or when Grantor 1's Spouse shall have died whichever last occurs.

Article Seventh provides that upon termination, the trustee shall pay and distribute the trust estate and any accumulated income to Beneficiary, if living. If Beneficiary is not then living, the trustee shall pay and distribute the trust estate and any accumulated income to the then living children of Beneficiary, in equal shares, or, if no child of Beneficiary is then living, to the then living descendants of Grantor 1, per stirpes.

Trust 2

On Date 3 (before September 25, 1985), Grantor 2 created Original Trust 2 for the primary benefit of Grantor 2's grandson, Beneficiary, and Beneficiary's children.

The provisions of Original Trust 2 are as follows. Article Second, paragraph C provides that following the death of Grantor 2 and during the balance of the term of the trust, the trustee shall distribute the net income of the trust, or apply the same for the benefit of, all or any one or more, or none, of the class of persons consisting of Grantor 1, Grantor 1's Spouse, Grantor 1's children and grandchildren (which includes Beneficiary and Beneficiary's children), in such proportions (whether equal or unequal and even if all the net income shall be distributed to one person) as the trustee shall determine in its absolute discretion. Any net income not so paid or applied shall be accumulated and added to the trust estate.

Article Third provides that the trust shall terminate upon the death of the survivor of Grantor 1's Spouse or when Beneficiary reaches 30 years of age, whichever last occurs. Upon termination, the trustee shall distribute the trust estate to Beneficiary if then living, but if not, to Beneficiary's then living lineal descendants, per stirpes. If Beneficiary has no living lineal descendants, the trustee shall distribute the trust estate to the then living lineal descendants of Grantor 1, per stirpes, and if there are none to the then living lineal descendants of Individual 1, per stirpes.

Article Fourth provides that at any time after the death of the survivor of Grantor 2 and Grantor 1's Father during the term of the trust, the trustee may, in its sole discretion, pay over all or any part of the trust estate to, or for the benefit of, any one or more of the class of persons to whom the income from the trust estate shall or may then be paid.

Original Trust 2 was irrevocable on September 25, 1985. It is represented that no additions were made to the trust since its creation on Date 3. The trustee of the trust is Bank.

On Date 2, pursuant to Article Fourth of Original Trust 2, Bank, as trustee, exercised its power to transfer trust principal of Original Trust 2 to Trust 2. It is represented that but for this distribution from Original Trust 2 to Trust 2, no contributions or additions have been made to Trust 2.

The provisions of Trust 2 are as follows. Article Second provides that the trustee shall distribute the net income of the trust to, or apply the same for the benefit of, all or any one or more of the class of persons consisting of Beneficiary and the Beneficiary's children, in such proportions (whether equal or unequal and even if all the net income shall be distributed to one person) as the trustee may determine in its sole and absolute discretion. Any net income not so paid or applied shall be accumulated and added to the trust estate.

Article Third provides that the trust shall terminate upon the death of Grantor 1's Spouse or when Beneficiary reaches 30 years of age, whichever last occurs. Upon termination the trustee shall distribute the trust estate to Beneficiary, if then living, or, if not then living, to Beneficiary's then living lineal descendants, per stirpes. If Beneficiary has no living lineal descendants, the trustee shall distribute the trust estate to the then living descendants of Grantor 1, per stirpes, or, if there are none, to the then living lineal descendants of Individual 1, per stirpes.

Article Fourth provides that the trustee may, in its sole and absolute discretion, pay over all or any part of the trust estate to, or for the benefit of, any one or more of the class of persons to whom the income from the trust estate shall or may then be paid.

Child Trusts

Grantor 2 and Grantor 1's Father are deceased. Beneficiary is over the age of 30 and Grantor 1's Spouse is still living. Trust 1 and Trust 2 will not terminate until Grantor 1's Spouse dies.

Bank, as the trustee of Trust 1 and Trust 2, proposes to distribute Trust 1 and Trust 2 assets to four separate trusts, one for the benefit of each of Beneficiary's four children (Child Trusts).

The provisions of the proposed Child Trusts are as follows. Article Third provides that the trustee shall pay over or apply the net income and principal thereof, to such extent, if any, including the whole thereof, in such manner and at such time or times as the trustee, in the exercise of absolute discretion, may deem advisable, to or for the benefit of the beneficiary (a child of the Beneficiary), during the beneficiary's life. Any net income not so paid over or applied shall be accumulated and added to the principal of the trust estate at least annually and thereafter shall be held, administered and disposed of as a part.

Article Fourth provides that upon the death of the beneficiary, the principal of the trust estate as it is constituted, and any net income then remaining in the hands of the trustee, shall be transferred, conveyed and paid over to such person or persons or organization or organizations, including the beneficiary's estate, the creditors of the beneficiary or the creditors of the beneficiary's estate, to such an extent, in such amounts or proportions, and in such lawful interests or estates, whether absolute or in trust, as the beneficiary may by written instrument executed and acknowledged by the beneficiary during the beneficiary's life and delivered to the trustee, or by the beneficiary's Last Will and Testament, appoint by a specific reference to this power. If the power of appointment is for any reason not effectively exercised in whole or in part by the beneficiary, the principal of the trust, as it is then constituted, and any net income then remaining in the hands of the trustee, to the extent not effectively appointed, shall, upon the beneficiary's death, be transferred, conveyed and paid over to the then living descendants of the beneficiary, per stirpes, or, if no such descendant is then living, to the then living descendants of Beneficiary, per stirpes or, if none, to the then living descendants of Grantor 1, per stirpes.

Article Fifth provides that if not sooner terminated, Child Trust shall terminate upon the twenty-first anniversary of the death of the last to die of the descendants of Grantor 1 and the descendants of Individual 2 who were in being on Date 1. Upon termination, the principal and any accrued, accumulated and undistributed income, shall be transferred, conveyed and paid over to the beneficiary currently eligible to receive the income of such trust.

You are requesting the following rulings:

1. The proposed distributions from Trust 1 to the Child Trusts and any future distributions from a Child Trust of property which originated from Trust 1 to the beneficiary of that Child Trust will not be subject to GST tax.

2. The proposed distributions from Trust 2 to the Child Trusts and any future distributions from a Child Trust of property which originated from Trust 2 to the beneficiary of that Child Trust will not be subject to GST tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under § 1433 of the Tax Reform Act of 1986 (the Act), GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

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 under § 26.2601-1(b) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains 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.

Under § 26.2601-1(b)(4)(i)(A), the distribution of trust principal from an exempt trust to a new trust will not cause the new trust to be subject to the provisions of chapter 13, if the terms of the governing instrument of the exempt trust authorizes distributions to the new trust without the consent or approval of any beneficiary or court, and the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(E), Example 1, illustrates a situation in which Trust, that is otherwise exempt from the GST tax, authorizes the trustee to distribute income and principal, at the trustee's discretion, for the benefit of A, A's spouse, and A's issue. At the time Trust was established, A had two children, B and C. A corporate fiduciary is trustee and has the discretion to distribute all or part of the income to one or more of a group consisting of A, A's spouse or A's issue. The trustee is also authorized to distribute all or part of the principal to one or more trusts for the benefit of A, A's spouse, or A's issue. Any trust established must terminate 21 years after the death of the last child of A to die who was alive at the time the trust was executed. Trust will terminate on the death of A, at which time the remaining principal will be distributed to A's issue, per stirpes. The terms of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In 2002, the trustee distributed part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate 21 years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C per stirpes. The example concludes that, under the facts presented, the terms of the new trust do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of any interest in property for a period, measured from the date of creation of Trust, extending beyond any life in being at the date of creation of Trust plus a period of 21 years, plus, if necessary, a reasonable period of gestation. Therefore, neither Trust nor the new trust will be subject to the provisions of chapter 13.

In the present case, Bank, as the trustee for Trust 1 and Trust 2, is authorized under Article Fourth of Trust 1 and Trust 2, to distribute any part or all of the trust estate to or for the benefit of Beneficiary or his children. Trustee proposes to distribute Trust 1 and Trust 2 assets to four Child Trusts created for each child of Beneficiary. Moreover, each beneficiary of a Child Trust will have a testamentary general power of appointment over the trust, which will cause the trust to be includible in such child's estate at the child's death under § 2041(a)(2). Accordingly, each beneficiary will be treated as the transferor of the trust corpus for GST tax purposes under § 2652(a)(1).

Under the circumstances in this case, the proposed Trust 1 and Trust 2 distributions to a Child Trust will not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation. Therefore, based on the facts submitted and the representations made, we conclude that the proposed distributions from Trust 1 to the Child Trusts and any future distributions from a Child Trust of property which originated from Trust 1 to the beneficiary of that Child Trust will not be subject to GST tax. We also conclude that the proposed distributions from Trust 2 to the Child Trusts and any future distributions from a Child Trust of property which originated from Trust 2 to the beneficiary of that Child Trust will not be subject to GST tax.

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.

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

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures (2)
Copy for section 6110 purposes
Copy of this letter