

Internal Revenue Service

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RE:

Legend:

- Grantor =
- Grandson =
- Grandson's Mother =
- Trust 1 =
- Trust 2 =

- Trust 3 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- State =
- Year =
- Declaration of Trust =

Dear :

This letter responds to a letter dated December 9, 2010, submitted by your authorized representative, requesting rulings under §§ 2041 and 2601 of the Internal Revenue Code.

On Date 1, Grantor established Trust 1 for the benefit of Grandson's Mother and her descendants. On Date 2, Grantor established Trust 2 for the primary benefit of Grantor's daughter, Grandson, Grandson's spouse, Grandson's descendants, and the spouses of Grandson's descendants. On Date 3, Grantor executed her Last Will and Testament in which she provided for a testamentary trust, Trust 3, to benefit Grandson, Grandson's spouse, Grandson's issue, and the spouses of Grandson's issue. Grantor

died testate on Date 4, survived by Grandson. Dates 1 through 4 are prior to September 25, 1985.

Trust 1

Article 1 authorizes the trustees to distribute net income to, or for the benefit of, Grandson's Mother and her descendants, in such amounts or proportions, and at such times, and in such manner as the trustees in their absolute discretion deem advisable. Pursuant to Article 2, Trust 1 was divided into two equal parts, Trust A and Trust B, upon the death of Grandson's Mother. Trust A is for the primary benefit of Grandson. Trust B is for the primary benefit of a granddaughter who is not a party to this ruling request.

Article 2(a)(1) authorizes the trustees to distribute net income of Trust A to, or for the benefit of, a class composed of Grandson and Grandson's descendants, in such amounts or proportions, and at such times, and in such manner as the trustees in their absolute discretion deem advisable.

Article 2(a)(2) provides Grandson with a testamentary non-general power of appointment over the balance of Trust A that may be exercised in favor of the members of a class composed of Grantor's issue (other than Grandson, Grandson's estate, or the creditors of Grandson's estate), and the spouses of Grantor's issue (including the spouse of Grandson), in such proportions and upon such lawful estates, trusts, terms and conditions as Grandson may direct or appoint by will.

Article 2(a)(3) provides that any portion of Trust A not appointed by Grandson pursuant to the power of appointment will pass to Grandson's then-living issue, *per stirpes*, but in default of such issue, to the persons, excluding Grantor, who would then be entitled thereto under the laws of State, if Grandson had died the owner thereof, intestate, and a resident of State.

Article 4(y) provides that no income beneficiary of Trust 1, or the spouse of any income beneficiary of Trust 1, who becomes a trustee shall have any power in the determination of the payment or distribution of the income of Trust 1.

Trust 2

Article 2 authorizes the trustees to distribute net income to, or for the benefit of, the members of a class composed of Grandson, Grandson's spouse, Grandson's descendants, the spouses of Grandson's descendants, and Grandson's Mother, in such amounts or proportions, at such times, and in such manner as the trustees in their absolute discretion deem advisable.

Article 3 provides Grandson with a testamentary power of appointment over the balance of Trust 2 that may be exercised in favor of the members of a class composed of Grantor's issue (other than Grandson, Grandson's estate, or the creditors of Grandson's estate), and the spouses of Grantor's issue (including the spouse of Grandson), in such proportions and upon such lawful estates, trusts, terms and conditions as Grandson may direct or appoint by will.

Article 4 provides that any portion of Trust 2 not appointed by Grandson pursuant to the power of appointment will pass to Grandson's then-living issue, *per stirpes*, but in default of such issue, to the persons, excluding Grantor, who would then be entitled thereto under the laws of State, if Grandson had died the owner thereof, intestate, and a resident of State.

Article 6(y) provides that neither Grandson nor any other income beneficiary of Trust 2, nor the spouse of any income beneficiary of Trust 2, who becomes a trustee shall have any power in the determination of the payment or distribution of the income of Trust 2.

Trust 3

Trust 3 authorizes the trustees to distribute the income of Trust 3 to, or for the benefit of, a class composed of Grandson, Grandson's spouse, Grandson's issue, and the spouses of Grandson's issue, in such proportions, and at such times, and in such manner as the trustees determine in their absolute discretion.

Item 6(b) authorizes the trustees to distribute principal to Grandson in the event of possible emergencies such as serious accident or illness or other event, upon the happening of which his immediate necessities will outweigh consideration of permanency of income.

Item 6(c) provides Grandson with a testamentary non-general power of appointment over the balance of Trust 3 that may be exercised in favor of the members of a "narrow familial class" composed of Grandson's spouse, Grandson's issue, and the spouses of Grandson's issue. If none of his issue survives Grandson, then the power of appointment over Trust 3 may be exercised in favor of the members of a "broader familial class" composed of Grantor's issue and the spouses of Grantor's issue.

Item 6(c) also provides that any portion of Trust 3 that is not appointed by Grandson pursuant to the power of appointment will pass to Grandson's then-living issue, *per stirpes*, but in default of such issue, to the persons who would then be entitled thereto under the laws of State, if Grandson had died the owner thereof, intestate, and a resident of State.

Item 8(x) provides that no income beneficiary, or the spouse of any income beneficiary, who becomes a trustee of Trust 3 shall have any power in the determination of the payment or distribution of the income of Trust 3 or the determination of the payment or distribution of any advance distribution of principal.

Division of Trust A of Trust 1, Trust 2, and Trust 3

In Year, pursuant to a court order, Trust A of Trust 1 was divided into two identical trusts, Trust A and Trust A-One; Trust 2 was divided into Trust A and Trust A-One; and Trust 3 was divided into Trust B and B-One.

Grandson executed a will in which he exercised the testamentary non-general power of appointment granted to him over the balance of Trust A of Trust 1; Trust A of Trust 2, and Trust B of Trust 3. Grandson appointed Trust A of Trust 1 to Grandson Family Trust 1, Trust A of Trust 2 to Grandson Family Trust 2, and Trust B of Trust 3 to Grandson Family Trust 3.

Family Trusts

Pursuant to Grandson's Declaration of Trust, each of the family trusts will be administered as a separate single trust during the lifetime of Grandson's spouse, if she survives Grandson. The trustees will have the discretion to pay to, or for the benefit of, Grandson's spouse, Grandson's grandchildren, and the living descendants of any predeceased grandchild, so much or all of the net income and principal from the family trusts as the trustees determine is necessary and advisable for their health, support, maintenance, and education. Any payments of principal made to, or for the benefit of, a grandchild or descendant of Grandson will be charged against the ultimate distributive share of the grandchild or descendant to whom or for whose benefit the payments are made.

Upon the death of Grandson's spouse (or upon Grandson's death, in the event Grandson's spouse predeceases Grandson), the trust estate of each family trust will be divided into separate trusts so as to provide one separate trust for each then-living grandchild of Grandson and one separate trust for each deceased grandchild of Grandson with descendants then living. The trustee of each trust that is set aside for a deceased grandchild of Grandson with descendants then living will further divide each trust, *per stirpes*, among the descendants of such predeceased grandchild of Grandson. Each such share shall be held as an additional separate trust.

The trustees may distribute the net income and principal from each separate trust for the health, support, maintenance, and education of the beneficiary. Upon the death of the beneficiary, the undistributed balance of the trust being administered for the benefit of such beneficiary will be divided into separate trusts so as to provide one

separate trust for each then-living child of the deceased beneficiary and one separate trust for each deceased beneficiary with descendants then living.

Each of the family trusts created for the grandchildren of Grandson, or descendants of a deceased grandchild will terminate twenty-one years after the death of the measuring lives designated for each trust, as discussed below. At the time of each family trust's termination, the assets of each trust created for the grandchildren of Grandson, or descendants of a deceased grandchild, will vest and be paid over and distributed to the trust's beneficiary. Upon termination, the trust assets will be distributed outright if the beneficiary is over age 55, otherwise continued in trust. If a beneficiary dies before age 55, the trustee is to distribute the assets to the beneficiary's estate.

The measuring lives of Grandson Family Trust 1 are composed of the same measuring lives for Trust A of Trust 1. The measuring lives of Grandson Family Trust 2 are composed of the same measuring lives for Trust A of Trust 2. The measuring lives of Grandson Family Trust 3 are composed of the same measuring lives for Trust B of Trust 3. All persons in the class of measuring lives for each trust, Trust 1, Trust A of Trust 1, Trust 2, Trust A of Trust 2, and Trust 3 and Trust B of Trust 3, were alive at the time each trust was created.

It is represented that there have been no actual or constructive additions to Trusts 1 through 3, Trust A of Trust 1, Trust A of Trust 2, or Trust B of Trust 3 after September 25, 1985.

You have requested the following rulings:

(1) The exercise by Grandson of the powers of appointment over Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3 in favor of Grandson Family Trusts 1, 2, and 3, as proposed in the Declaration of Trust, will not result in any property subject to the powers of appointment being includible in Grandson's estate under § 2041.

(2) The exercise by Grandson of the powers of appointment over Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3 in favor of Grandson Family Trusts 1, 2, and 3, as proposed in the Declaration of Trust, will not result in a transfer of property that is subject to generation-skipping transfer tax and the appointed property passing to Grandson Family Trusts 1, 2, and 3 will retain its exempt status for GST tax purposes.

Law and Analysis

Issue 1

Section 2041(a)(2) provides that the value of the gross estate includes the value of all property with respect to which the decedent has at the time of his death a general

power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment is considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides, with exceptions not relevant here, that the term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that a power of appointment is not a general power of appointment if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate, or (b) expressly not exercisable in favor of the decedent or his creditors, or the creditors of decedent's estate.

In this case, Grandson proposes to appoint the entire corpus of Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3 to Grandson Family Trust 1, Grandson Family Trust 2, and Grandson Family Trust 3, respectively. Under the terms of Trust A of Trust 1, Grandson has a testamentary power to appoint the balance of Trust A of Trust 1 to members of a class consisting of Grantor's issue and the spouses of Grantor's issue (excluding Grandson, Grandson's estate or the creditors of Grandson's estate.) Trust A of Trust 2 has similar class provisions. Under Trust B of Trust 3, Grandson has a testamentary power to appoint the balance of Trust B of Trust 3 to a narrow class consisting of his spouse, Grandson's issue, and the spouses of Grandson's issue. If none of Grandson's issue survives, then Grandson may appoint the assets of Trust B of Trust 3 to a broader class consisting of Grantor's issue and their spouses.

The testamentary powers of appointment granted Grandson in these trusts are not general powers of appointment within the meaning of § 2041(b)(1) because Grandson cannot exercise these powers in favor of himself, his estate, or the creditors of his estate. Accordingly, based upon the facts presented and representations made, we conclude that the exercise by Grandson of the powers of appointment over Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3 in favor of Grandson Family Trusts 1, 2, and 3, as proposed in the Declaration of Trust, will not result in any property subject to the powers of appointment being includible in Grandson's estate under § 2041.

Issue 2

Section 2601 imposes a tax on every generation-skipping transfer (GST). The term "generation-skipping transfer" is defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the 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), the GST 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)(1)(v)(A) provides that, except as provided in § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after post-September 25, 1985 release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or 12, the value of the entire portion of the trust subject to the power is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise or lapse.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b) is not treated as an addition to a trust if -- (1) The power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b); and (2) In the case of an exercise, the power of appointment is not exercised 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 of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period).

This rule is illustrated in Example 4 of § 26.2601-1(b)(1)(v)(D). In Example 4, on March 1, 1985, T established an irrevocable trust as defined in § 26.2601-1(b)(ii). Under the terms of the trust instrument, the trustee is required to distribute the entire income annually to T's child, C, for life, then to T's grandchild, GC, for life. GC has the power to appoint any or all of the trust assets to Trust 2 which is an irrevocable trust (as defined in § 26.2601-1(b)(ii)) that was established on August 1, 1985. The terms of Trust 2's governing instrument provide that the trustee shall pay income to T's great grandchild, GGC, for life. Upon GGC's death, the remainder is to be paid to GGC's issue. GGC was alive on March 1, 1985, when Trust 1 was created. C died on April 1, 1986. On July 1, 1987, GC exercised the power of appointment. The exercise

of GC's power does not subject future transfers from Trust 2 to tax under chapter 13 because the exercise of the power in favor of Trust 2 does not suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of Trust 1, extending beyond the life of GGC (a beneficiary under Trust 2 who was in being at the date of creation of Trust 1) plus a period of 21 years. The result would be the same if Trust 2 had been created after the effective date of chapter 13.

In this case, Trusts 1 through 3 were irrevocable on September 25, 1985. It is represented that there have been no actual or constructive additions to Trusts 1 through 3 or Trust A of Trust 1, Trust A of Trust 2, or Trust B of Trust 3 after September 25, 1985.

The testamentary powers of appointment held by Grandson in Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3, are not general powers of appointment within the meaning of § 2041(b)(1). Pursuant to Grandson's exercise of these powers over these trusts, the entire corpus of Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3 will pass to Grandson Family Trust 1, Grandson Family Trust 2, and Grandson Family Trust 3, respectively. Each Grandson Family Trust must terminate no later than the expiration of 21 years after the death of the survivor of the persons whose lives measure the duration of Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3. Consequently, Grandson's exercise of the powers will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest for a period, measured from the date of creation of Trusts 1, 2, and 3, as the case may be, extending beyond any life in being at the date of creation of Trusts 1, 2, and 3 plus a period of 21 years plus, if necessary, a reasonable period of gestation.

Accordingly, based on the facts submitted and representations made, we conclude that the exercise by Grandson of the powers of appointment over Trust A of Trust 1, Trust A of Trust 2, and Trust B of Trust 3 in favor of Grandson Family Trusts 1, 2, and 3, as proposed in the Declaration of Trust, will not result in a transfer of property that is subject to generation-skipping transfer tax and the appointed property passing to Grandson Family Trusts 1, 2, and 3 will retain its exempt status for GST tax purposes.

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 specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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,

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

Enclosure

Copy for § 6110 purposes
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cc: