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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:
December 10, 2013

Legend

Date 1 =

Date 2 =

Date 3 =

Settlor =

Spouse =

A =

B =

C =

Trust A =

Trust B =

Trust C =

State =

State Statute =

Dear :

This letter responds to correspondence, dated April 30, 2013 requesting rulings regarding the gift, estate, and generation-skipping transfer (GST) tax consequences of proposed modifications to Trust A, Trust B, and Trust C (collectively, Trusts).

The facts submitted and representations made are as follows.

On Date 1, Settlor and Spouse (Settlors) created Trust A, an irrevocable trust, for the sole benefit of their grandchild, A. On Date 2, Settlors created Trust B, an irrevocable trust, for the sole benefit of their grandchild, B. On Date 3, Settlors created Trust C, an irrevocable trust, for the sole benefit of their grandchild, C.

Trusts are governed by the laws of State and are substantially identical in the following respects. The initial trustees of Trust A, Trust B, and Trust C are the parents of A, B, and C, respectively. Trusts expressly prohibit Settlors, or any other transferors to Trusts, from serving as trustees of Trusts. Trusts also prohibit their respective trustees from exercising any power vested in them for the benefit of Settlor, Spouse, or any other transferors to Trusts. In addition, Trusts prohibit their respective trustees from distributing any income or principal to discharge any legal obligation of support or otherwise of Settlor, Spouse, any other transferor to the trust, any trustee or other person, toward the beneficiary of the trust or any other person.

A and B are entitled during their lifetimes to discretionary distributions of the net income and principal of Trust A and Trust B, respectively, at any time and for any purpose. C is entitled during his lifetime to discretionary distributions of net income only for the specific purpose of C's education and the payment of taxes. C is also entitled to discretionary distributions of principal for the specific purpose of C's education, the payment of taxes, and investment in a home or business or non-speculative investment.

Trustees of Trust A are required to distribute to A one-half of the Trust A estate when A reaches the age of 32 and the remaining balance when A reaches the age of 38. Trustees of Trust B are required to distribute to B one-half of the Trust B estate when B reaches the age of 32 and the remaining balance when B reaches the age of 38. Trustees of Trust C are required to distribute to C one-half of the Trust C estate when C reaches the age of 36 and the remaining balance when C reaches the age of 42.

A, B, and C have general powers of appointment, exercisable by will or inter vivos instrument, over the Trust A estate, the Trust B estate, and the Trust C estate, respectively. If A, B, or C dies without exercising his or her power of appointment and before the final distribution of his or her respective trust estate, the balance of the trust estate passes to his or her issue and, if none, to Settlors' grandchildren who are the deceased beneficiary's siblings and, if none, to Settlors' other living grandchildren, with the issue of any deceased grandchild taking by representation. If no grandchild or more remote issue of Settlors are then living the balance of the trust estate passes to Settlors' then living children.

Trust C gives the initial trustees of Trust C the right to alter or change the names and/or order of successor trustees, provided that, aside from the initial trustees, there are always at least two trustees. Trust A and Trust B do not give the initial trustees of Trust A and Trust B, respectively, the right to alter or change the names or order of successor trustees.

State Statute provides that if the settlor and all beneficiaries of a trust consent, they may compel the modification or termination of an irrevocable trust without court approval.

Settlor, Spouse, A, B, and C propose to modify Trusts by executing the following agreements:

1) Settlor, Spouse, and A will execute an agreement that provides for the modification of Trust A to give trustees of Trust A the right to alter or change the names and order of successor trustees to Trust A.

2) Settlor, Spouse, and B will execute an agreement that provides for the modification of Trust B to give trustees of Trust B the right to alter or change the names and order of successor trustees to Trust B.

3) Settlor, Spouse, and C will execute an agreement that provides for the modification of Trust C to allow discretionary distributions to C at any time and for any purpose.

It is represented that Settlor and Spouse allocated sufficient GST exemption to their Date 1, Date 2, and Date 3 transfers to Trusts to cause Trusts to each have an inclusion ratio of zero.

You have requested the following rulings:

1) The modifications of Trusts will not cause the property of Trusts to be included in Settlor's gross estate at her death under § 2036 or 2038.

2) The modifications of Trusts will not be treated as deemed transfers of any property of Trusts by Settlor for purposes of § 2501.

3) The modifications of Trusts will not cause Trusts, as modified, to lose exempt status for purposes of the GST tax of chapter 13.

Ruling 1

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death - (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

Section 20.2038-1(a)(2) of the Estate Tax Regulations provides that § 2038 does not apply if the decedent's power could be exercised only with the consent of all parties having an interest (vested or contingent) in the transferred property, and if the power adds nothing to the rights of the parties under local law.

In this case, Settlor is the transferor of the property to Trusts for purposes of §§ 2036 and 2038. However, Settlor has not retained for any period which does not in fact end before her death, the possession or enjoyment of, or the right to the income from the property transferred to Trusts. Further, the respective beneficiaries of Trusts must consent to the modifications of Trusts under State Statute. Any right Settlor has to participate in the modifications of Trusts arises solely from rights granted under State Statute and may be exercised only with the consent of the respective beneficiaries of Trusts. Accordingly, based on the facts submitted and the representations made, we conclude that the modifications of Trusts will not cause any property of Trusts to be includible in the gross estate of Settlor under § 2036 or 2038.

Ruling 2

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 25.2511-2(b) of the Gift Tax Regulations provides that a gift is complete as to any property, or part thereof, or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another.

Section 25.2511-2(c) provides that a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 25.2511-2(d) provides that a gift is not considered incomplete, however, merely because the donor reserves the power to change the manner or time of enjoyment. Thus, the creation of a trust the income of which is to be paid annually to the donee for a period of years, the corpus being distributable to him at the end of the period, and the power reserved by the donor being limited to a right to require that, instead of the income being so payable, it should be accumulated and distributed with the corpus to the donee at the termination of the period, constitutes a completed gift.

Section 25.2511-2(e) provides that a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. A trustee, as such, is not a person having an adverse interest in the disposition of the trust property or its income.

In this case, Settlor transferred property to Trust A on Date 1, to Trust B on Date 2, and to Trust C on Date 3. On each of these dates, Settlor parted with dominion and control of the property transferred. Settlor did not retain any power to change these dispositions for her own benefit or for the benefit of another. Settlor did not retain the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves. Settlor is a party to agreements to modify Trusts pursuant to the requirements of State Statute. The other parties to these agreements are the respective beneficiaries of Trusts, each of whom has a substantial interest in his or her respective trust. Therefore, Settlor is not exercising any power in conjunction with persons not having a substantial interest in Trusts. Accordingly, based on the facts submitted and the representations made, we conclude that the modifications to Trusts will not result in transfers by Settlor for purposes of § 2501.

Ruling 3

Section 2601 provides that a tax is imposed on every generation-skipping transfer. Section 2611(a) provides that the term “generation-skipping transfer” means a taxable distribution, a taxable termination, and a direct skip.

Section 26.2601-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations 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 paragraph (b)(1), (2), or (3) of this section will not cause the trust to lose its exempt status. Unless specifically provided otherwise, the rules contained in this paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. Thus, 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 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 the exempt trust to be subject to the provisions of chapter 13, if 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 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.

No guidance has been issued concerning the modification of a trust that may affect the status of a trust that is exempt from GST tax because sufficient GST exemption was allocated to the trust to result in an inclusion ratio of zero. At a minimum, modification that would not affect the GST status of a grandfathered trust should similarly not affect the exempt status of such a trust.

In this case, the modifications to Trust A and Trust B are administrative and the modification to Trust C merely broadens the authority of the trustees of Trust C to make discretionary distributions to C during C’s lifetime. The modifications will not shift a beneficial interest in any of the Trusts 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 modifications, and the modifications do not extend the time for vesting of any beneficial interest in Trusts beyond the period originally provided in Trusts. Accordingly, based upon the facts submitted and the representations made, we conclude that the modifications to Trusts will not cause Trusts, as modified, to lose their exempt status for purposes of chapter 13.

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.

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.

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.

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

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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