

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

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Date:
April 20, 2016

In Re:

Legend

Trust

Great-grandmother
Grandfather
Beneficiary
Date 1
Date 2
Date 3
State Statute
Trial Court

Charity

Dear _____ :

This letter responds to your authorized representative's letter dated October 9, 2015, requesting a ruling concerning the generation-skipping transfer (GST) tax consequences of the proposed modification of Trust pursuant to § 2601 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Great-grandmother executed an irrevocable trust, Trust, for the benefit of the grandchildren of her son, Grandfather.

Article 1 of Trust provides that the trustees are to promptly divide the trust property into equal parts, one for the account of each now living child of Grandfather. Each of said parts is to be a separate and distinct trust.

Article 2 of Trust provides, in relevant part, that each trust for the account of a child of Grandfather is to be held undivided during the period or periods when he or she has no living issue. When a child is born to a child of Grandfather, the trustees are to create a share for the account of said great-grandchild of Great-grandmother.

Article 3.B.1. provides, in relevant part, that with respect to each share, until termination of the trust, the trustees may from time to time or at any time pay to the great-grandchild such amounts, if any, from the net income and/or principal of said share as they may determine, adding to principal from time to time any income not so expended. In addition, if and when the great-grandchild has attained the age of 25, the trustees are to distribute to him or her such amount of the principal of said share as he or she may from time to time or at any time demand in writing, provided that the total subject to withdrawal does not exceed one-half of the value of said share when the great-grandchild attains the age of 25.

Article 3.B.2. provides, in relevant part, that the trust of said share is to terminate when the great-grandchild attains the age of 35 or sooner dies. Upon such termination, the trust property of said share is to be paid over to the great-grandchild, if then living. If the great-grandchild is not living, the trust property of said share is to be paid over to his or her spouse, Grandfather's issue other than the great-grandchild, or spouses of such issue as the great-grandchild may have appointed by will executed after he or she attained the age of 18. In default of appointment, the remaining property of said share is to be paid to the issue of great-grandchild, *per stirpes*; or if great-grandchild has no issue then living, to the then living issue of great-grandchild's parent, who is Grandfather's child, *per stirpes*; or if there is no such issue then living, to said parent; otherwise *per stirpes* to Grandfather's then living issue; or if there is no issue of Grandfather then living, to Charity.

Beneficiary is a grandchild of Grandfather and a great-grandchild of Great-grandmother. Beneficiary was born with cognitive deficits and other disabilities. Beneficiary does not have the capacity to execute the power of appointment provided in Article 3.B.1. or Article 3.B.2. On Date 2, Beneficiary's parents were appointed as her permanent conservators.

State Statute provides that the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intent. The court may modify the administrative terms of a trust if continuation of the

trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

The trustees of Trust have petitioned Trial Court to modify the terms of Trust as they apply to the shares created for the benefit of Beneficiary. As modified, Article 3.B.1. of Trust will provide that with respect to each share, until termination of the trust, the trustees may from time to time or at any time pay to Beneficiary such amounts, if any, from the net income and/or principal of said share as they may determine, adding to principal from time to time any income not so expended. As modified, Article 3.B.2. of Trust will provide that the trust of said share is to terminate upon the death of Beneficiary. If Beneficiary is less than 25 years of age at the time of her death, the remaining trust property of said share is to be paid over to her issue, *per stirpes*; or if she has no issue then living, to the then living issue of her parent, who is Grandfather's child, *per stirpes*; or if there is no such issue then living, to said parent; otherwise *per stirpes* to Grandfather's then living issue; or if there is no issue of Grandfather then living, to Charity. If Beneficiary is at least 25 years of age but less than 35 years of age at the time of her death, one-half of the remaining property of said share is to be paid over to the personal representatives of her estate to be disposed of as part of her estate. The balance of the property is to be paid over to her issue, *per stirpes*; or if she has no issue then living, to the then living issue of her parent, who is Grandfather's child, *per stirpes*; or if there is no such issue then living, to said parent; otherwise *per stirpes* to Grandfather's then living issue; or if there is no issue of Grandfather then living, to Charity. If Beneficiary is at least 35 years of age at the time of her death, the remaining property of said share is to be paid over to the personal representatives of her estate to be disposed of as part of her estate.

It is represented that Beneficiary's legal incompetency is a circumstance that was not anticipated by Great-grandmother and that the modification to keep Beneficiary's inheritance in trust for her lifetime furthers the essential purpose of Trust to provide financially for Great-grandmother's great-grandchildren. On Date 3, Trial Court ordered that Trust be modified, contingent upon a favorable ruling from the Internal Revenue Service.

You have requested a ruling that after the proposed modification of the terms of Trust, Trust will remain exempt from the application of the GST tax and that no distribution from or termination of any interest in Trust will be subject to the GST tax.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST, which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations,

provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was 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)(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 GST tax under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST 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)(1) provides that a modification of the governing instrument of an exempt trust 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, 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. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST or the creation of a new GST.

In the present case, the proposed modification of Trust, under State Statute, provides that Beneficiary's interest in Trust will continue to be held in trust for the exclusive benefit of Beneficiary during her lifetime. Since Beneficiary does not have the capacity to execute the power of appointment provided in Article 3.B.2. of Trust, if Beneficiary dies before the age of 25, the property in Trust will pass under the terms of the modified Trust in the same manner as under the terms of the original Trust. If Beneficiary dies after the age of 25 and before the age of 35, one-half of the then remaining property of Trust is includible in Beneficiary's gross estate for federal estate tax purposes and the other one-half portion will pass as it would have passed under the terms of the original Trust. If Beneficiary dies after the age of 35, upon Beneficiary's death, the entire Trust will terminate and all of the trust property will be includible in Beneficiary's gross estate for federal estate tax purposes.

Accordingly, based on the facts presented and the representations made, we find that after the proposed modification of Trust, Trust will remain exempt from the application of the GST tax and that no distribution from or termination of any interest in Trust will be subject to the GST tax.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

A copy of this letter should be attached to any gift, estate, or GST tax returns that you may file relating to this matter.

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,

Leslie H. Finlow

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

Enclosures

Copy for § 6110 purposes
Copy of this letter