

Internal Revenue Service

Number: **201451005**

Release Date: 12/19/2014

Index Number: 2501.00-00, 2601.00-00

In Re:

Department of the Treasury
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-109275-14

Date: SEPTEMBER 04, 2014

LEGEND:

Grantor	=
Grandchild 1	=
Great-Grandchild 1	=
Great-Grandchild 2	=
Great-Grandchild 3	=
Grandchild 2	=
Great-Grandchild 4	=
Great-Grandchild 5	=
Great-Grandchild 6	=
Grandchild 3	=
Great-Grandchild 7	=
Great-Grandchild 8	=
Great-Grandchild 9	=
Date	=
Year	=
X	=
Trust 1	=

Trust 2	=
---------	---

Trust 3	=
---------	---

Trust 4 =

Bank =

State =

State Statute =

Dear :

This letter responds to your authorized representative's letter dated March 4, 2014, requesting rulings on the estate, gift, and generation-skipping transfer (GST) tax consequences of the proposed modifications and division of certain trusts.

Facts:

The facts and representations submitted are summarized as follows. On Date, Grantor executed a trust agreement (Trust Agreement) irrevocably creating four trusts, Trust 1, Trust 2, Trust 3, and Trust 4 (collectively the Trusts). Initially, the Trusts were funded with a total of \$x. In Year (a date before September 25, 1985), Grantor transferred additional assets to the Trusts. No additions have been made since then.

Under Article I of the Trust Agreement, each of the four trusts is to own an undivided one-fourth share of the total property transferred by Grantor. Currently, Trust 1 and Trust 2 benefit Grandchild 1 and her descendants; Trust 3 benefits Grandchild 2 and his descendants, and Trust 4 benefits Grandchild 3 and her descendants.

Under Article II, for each trust, distributions of income and/or corpus may be made equally or unequally to or for the benefit of any beneficiary of that trust even to its complete exhaustion. Such distributions are to be at the complete and uncontrolled discretion of the trustee.

Under Article III, each of the trusts will terminate twenty-one years after the death of the last survivor of all of the named beneficiaries who were living on Date, plus one period of gestation, if there is any possibility of there being an unborn child, who, if living at the end of the twenty-one year period, would be entitled to a portion of the final distribution.

Under Article IV, on termination, the assets remaining in a respective trust are to be distributed *per stirpes*, free of trust, to the descendants of the grandchild of Grantor who was named as a beneficiary of that Trust. Currently, Grandchild 1 has three children –

Great-Grandchild 1, 2, and 3; Grandchild 2 has three children – Great-Grandchild 4, 5, and 6, and Grandchild 3 has three children – Great-Grandchild 7, 8, and 9.

Article VIII provides that the trusts are to be governed by the laws of State.

Bank and Grandchild 2 are serving as the co-trustees of Trusts 1, 2, and 3. Bank and Grandchild 3 are serving as the co-trustees of Trust 4.

Proposed transaction

The trustees propose to divide the Trusts into nine trusts (the Divided Trusts) so that each great-grandchild will have a separate trust. Each of the Divided Trusts will receive a *pro rata* portion from the respective existing trust. After the division, the Divided Trusts will continue under the same terms and for the same duration as originally provided in the Trust Agreement.

One-third of the assets of Trust 1 and one-third of the assets of Trust 2 will be held in a separate trust for the benefit of Grandchild 1 and Great-Grandchild 1 and her descendants. Another third of the assets of Trust 1 and another third of the assets of Trust 2 will be held in a separate trust for the benefit of Grandchild 1 and Great-Grandchild 2 and his descendants. The remaining assets of Trust 1 and the remaining assets of Trust 2 will be held in a separate trust for the benefit of Grandchild 1 and Great-Grandchild 3 and his descendants.

One-third of the assets of Trust 3 will be held in a separate trust for the benefit of Grandchild 2 and Great-Grandchild 4 and his descendants. Another third of the assets of Trust 3 will be held in a separate trust for the benefit of Grandchild 2 and Great-Grandchild 5 and his descendants. The remaining assets of Trust 3 will be held in a separate trust for the benefit of Grandchild 2 and Great-Grandchild 6 and his descendants.

One-third of the assets of Trust 4 will be held in a separate trust for the benefit of Grandchild 3 and Great-Grandchild 7 and his descendants. Another third of the assets of Trust 4 will be held in a separate trust for the benefit of Grandchild 3 and Great-Grandchild 8 and her descendants. The remaining assets of Trust 4 will be held in a separate trust for the benefit of Grandchild 3 and Great-Grandchild 9 and her descendants.

The distribution provisions under Article II of Trust Agreement remain the same, except that distributions to or for the benefit of Grandchild 1, Grandchild 2, and Grandchild 3 are to be made equally from the Divided Trusts of which they are beneficiaries.

The termination provisions under Article III remain the same, except that on termination of a Divided Trust, the assets remaining in that trust will be distributed outright to the

great-grandchild named as a beneficiary of that trust. If the great-grandchild is not then living, the asset will be distributed, *per stirpes*, to the great-grandchild's descendants.

Under State law, on the petition of a trustee, a court may order that the terms of the trust be modified if, because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust. State Statute.

Requested Rulings

You have asked us to rule that:

- (1) The proposed modifications and division of the Trusts into the Divided Trusts will not cause the Trusts or any of the Divided Trusts to become subject to the generation-skipping transfer tax.
- (2) The proposed modifications and *pro rata* division of the Trusts will not cause any portion of the assets of those trusts to be includible in the gross estate of any beneficiary of those trusts or of the Divided Trusts.
- (3) The proposed modifications and the division of the Trusts and the *pro rata* allocation of those trusts' assets to the Divided Trusts will not constitute a transfer of property by any beneficiary of the Trusts or the Divided Trusts that will be subject to the federal gift tax.

Ruling 1

Section 2601 of the Internal Revenue Code imposes a tax on each 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 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that 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 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)(ii)(A) 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 –

- (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.

In this case, Trusts 1 through 4 were created and irrevocable before September 25, 1985. It is represented that no additions have been made to the Trusts since September 25, 1985. Consequently, these trusts are currently exempt from GST tax.

Each of the Trusts will be divided into three trusts on a *pro rata* basis. The dispositive terms of each Divided Trust will be the same as the dispositive terms provided under the Trust Agreement for Trusts 1, 2, 3, and 4, although limited to a particular family line. Each Divided Trust will terminate no later than the original termination date provided in the Trust Agreement. Accordingly, the proposed modifications and division of the Trusts into the Divided Trusts will not shift a beneficial interest to any beneficiary who occupies a lower generation than the person or persons who held the beneficial interest prior to the modifications and division, and will not extend the time for the vesting of any beneficial interest in a Divided Trust beyond the period provided for in the Trust Agreement.

Accordingly, based on the facts submitted and the representations made, and provided the appropriate court issues an order approving the modifications and division of the Trusts, we conclude that the proposed modifications and division of the Trusts into the Divided Trusts will not cause any of the Trusts or the Divided Trusts to become subject to GST tax.

Ruling 2

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2035(a) provides that if (1) the decedent transferred an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038, or 2042 if the transferred interest or relinquished power had been retained by the decedent on the date of death, then the value of the gross estate shall include the value of any property (or interest therein) that would have been so included. Under § 2035(b) the gross estate shall be increased by the amount of any gift tax paid by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of decedent's death.

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 an adequate consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for his life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's 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 2037(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 an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) the possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property and the value of the reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of the property.

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 an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of the decedent's 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.

In order for §§ 2035 through 2038 to apply, a decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property.

Based on the facts submitted and the representations made, we conclude that the proposed modifications and division of the Trusts do not constitute a transfer by any beneficiary within the meaning of §§ 2035 through 2038. The beneficiaries of the Divided Trusts will have the same interests after the proposed modifications and division as they had prior to the proposed modifications and division. Therefore, nothing will be transferred by them by reason of the proposed division.

Accordingly, based upon the facts submitted and the representations made, and provided the appropriate court issues an order approving the proposed modifications and division of the Trusts, we conclude that the proposed modifications and *pro rata* division of the Trusts will not cause any portion of the assets of those trusts to be includible in the gross estate of any beneficiary of those trusts or of the Divided Trusts under § 2035, 2036, 2037 or 2038.

Ruling 3

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

Section 2511(a) provides that 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.

In this case, each of the Trusts will be divided into three Divided Trusts on a *pro rata* basis. The dispositive provisions of each Divided Trust will be substantially the same as the dispositive provisions of the respective Trust. Each Divided Trust will terminate no later than the date on which the respective Trust would terminate.

Based on the facts submitted and the representations made, and provided that the appropriate court issues an order approving the proposed modifications and division of the Trusts, we conclude that the proposed modifications and division of the Trusts and the *pro rata* allocation of those trust assets to the Divided Trusts will not constitute a transfer of property by any beneficiary of the Trusts or the Divided Trusts that will be subject to federal gift tax under § 2501.

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.

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 Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures
Copy for section 6110 purposes