Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-120231-14

Re:

Date: NOVEMBER 12, 2015

LEGEND:

Settlor	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Corporate Trustee	=
Child	=
Grandchild	=
Great-grandchild A	=
Great-grandchild B	=
State Court	=
x	=

Dear :

This is in response to a letter dated May 12, 2014, and subsequent correspondence, submitted by your authorized representative requesting a ruling under section 2601 of the Internal Revenue Code.

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The facts and representations submitted are summarized as follows. Settlor created and funded Trust, an irrevocable trust, on Date 1 (a date before September 25, 1985) for the primary benefit of Grandchild. Corporate Trustee is the current trustee. Under Article II(A) of Trust, the trustee is authorized to purchase and maintain insurance on the life of Child. The net income is to be accumulated. However, the trustee may, in its sole discretion, pay for the benefit of Grandchild so much of the net income as the trustee may deem necessary and proper to provide for the support, maintenance and education of Grandchild.

Article II(B) provides that in the event of Grandchild's death during the life of the trust, the trustee is to pay to, or expend for, the benefit of Grandchild's descendants, so much of the net income and to the extent necessary, principal of Trust as the trustee, in its discretion may deem appropriate for the proper and appropriate education, maintenance, comfort, care and support of Grandchild's descendants.

Trust is to terminate on the earlier of Child's death (if no descendants), the death of Child's last surviving descendant, or five years after Child's death. Upon termination, the trustee is to distribute all of the Trust assets in equal shares to Grandchild's then surviving descendants.

Child died on Date 2. Thus, Trust will likely terminate on Date 3, the fifth anniversary of Child's death. Grandchild, the income beneficiary of Trust, is living. Grandchild has two children, Great-grandchild A and Great-grandchild B, who are to receive the Trust principal outright on Date 3.

On Date 4, the parties petitioned State Court for an order modifying Trust to provide that, on termination of Trust, the portion of principal and accumulated income otherwise passing outright to Great-grandchild A will be held in a separate trust to be administered for Great-grandchild A's exclusive benefit, and the portion of Trust principal and accumulated income otherwise passing outright to Great-grandchild B will be held in a separate trust to be administered for Great-grandchild B's exclusive benefit.

Corporate Trustee will serve as the trustee. Grandchild may serve as an advisor with regard to discretionary distributions, but Grandchild's suggestions will not be binding on Corporate Trustee, and Corporate Trustee will have the final authority and responsibility for all decisions regarding discretionary distributions.

Each Great-grandchild's separate trust

Each Great-grandchild's separate trust will provide that, throughout its duration, the trustee is authorized, in its discretion, to distribute such amount of income of that separate trust as may be reasonably necessary to provide adequately for the health, education, support, and maintenance of the Great-grandchild-beneficiary of that separate trust. Each trust will authorize the trustee, in its discretion, at any time, to

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distribute such amounts of the principal of that separate trust as may be reasonably necessary to provide adequately for the health, education, support, and maintenance of the Great-grandchild beneficiary of that separate trust.

In addition, the following distributions are to be made to a Great-grandchild-beneficiary from that Great-grandchild's separate trust. The sum of $ x will be distributed to him or her upon reaching age 32. The trustee will distribute one-third of the Great-grandchild's separate trust assets to him or her upon reaching age 40. One-half of the Great-grandchild's separate trust assets then on hand will be distributed to him or her upon reaching age 45.

Finally, a Great-grandchild's separate trust will terminate on the first to occur of: (i) the Great-grandchild's reaching age 50 (at which time the remaining separate trust assets will be distributed to him or her) or (ii) the Great-grandchild's death (at which time the remaining assets in that Great-grandchild's separate trust will be distributed in accordance with his exercise of a general testamentary power of appointment over the principal and accumulated income of that separate trust). If the Great-grandchild fails to exercise his general testamentary power of appointment, the separate trust assets will be distributed to or for the Great-grandchild's descendants per stirpes. If a Great-grandchild-beneficiary becomes incapacitated during the term of his separate trust, the assets of that Great-grandchild's separate trust will be retained in the separate trust for the duration of the incapacity or until his earlier death.

You have asked to rule that the proposed reformation and modification of the Trust agreement will not cause the Trust, or any Great-grandchild's separate trust to be established on the partition, to be subject to the tax on generation-skipping transfers under § 2601.

Section 2601 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 principal 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. In general, unless specifically provided otherwise, 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

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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 § 26.2601-1(b)(4)(i)(A), (B), or (C)) 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.

In the instant case, the reformation and modification of Trust pursuant to the State Court order will provide that the Trust principal that would otherwise pass outright to Great-grandchild A on termination of Trust will be held in further trust for the exclusive benefit of Great-grandchild A. Likewise, the Trust principal that would otherwise pass outright to Great-grandchild B on termination of Trust will be held in further trust for the exclusive benefit of Great-grandchild B. Each Great-grandchild will have a testamentary general power to appoint the property of his respective separate trust to anyone, including his estate or the creditors of his estate.

Under these circumstances, the assets held in a Great-grandchild's separate trust at his death will be included in his gross estate, for estate tax purposes, under § 2041(a)(2). Further, each Great-grandchild will be treated as the transferor of the principal of his separate trust for GST tax purposes under § 2041(a)(2).

Accordingly, the proposed modifications will not result in a shift of any beneficial interest in Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interest prior to the modification. Further, the modifications of Trust will not extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original trust. Finally, the modifications pertaining to trustee powers are administrative in nature. Section 26.2601-1(b)(4)(i)(D).

Based on the facts submitted and the representations made, we conclude that the proposed modifications comply with the provisions of § 26.2601-1(b)(4)(i)(D)(1) and will not cause Trust or any Great-grandchild's separate trust to be subject to the tax on generation-skipping transfers.

Except as expressly provided 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.

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This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

The ruling contained in this letter is 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.

Sincerely,

Melissa C. Liquerman
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of letter for § 6110 purposes

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