

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201711002**
Release Date: 3/17/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2601.00-00, 2601.04-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-118718-16
Date:
November 30, 2016

Legend

Settlor	=
Trustee	=
Granddaughter	=
Grandson	=
Spouse	=
GGC1	=
GGC2	=
GGGC1	=
GGGC2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Trust A	=
Trust B	=
Trust 1	=
Trust 2	=
Trust 3	=
Trust 4	=
Trust 5	=

Trust 6 =
 Trust 7 =
 Trust 8 =
 Trust 9 =
 Trust 10 =
 Trust 11 =
 Trust 12 =
 State 1 =
 State 2 =
 University A =
 University B =
 Statute 1 =
 Statute 2 =
 Statute 3 =

Dear :

This letter responds to your authorized representative's letter of June 3, 2016, and subsequent correspondence, regarding the generation-skipping transfer (GST) tax consequences of a proposed merger of six trusts into six newly-established trusts.

FACTS

The facts and representations submitted are as follows.

On Date 1, Settlor established Trust A, an irrevocable trust, for the benefit of Settlor's granddaughter (Granddaughter), Granddaughter's spouse (Spouse), and Granddaughter's children, GGC1 and GGC2, and Granddaughter's issue. Date 1 is a date before September 25, 1985. Trust A was governed by the laws of State 1.

Trust A provides that, during Granddaughter's life, the trustees shall distribute one-half of the net income to Granddaughter. The corporate trustee, in its absolute discretion, may direct the trustees to distribute the other one-half of the net income to Granddaughter and any of her children or issue. Further, the corporate trustee, in its absolute discretion, may direct the trustees to distribute principal to Granddaughter, Granddaughter's children or issue, but none to Granddaughter's husband, as the corporate trustee deems necessary for the support, maintenance, and education of such person.

Trust A provides that when Granddaughter dies, if Spouse predeceases her, then the corporate trustee, in its absolute discretion, may direct the trustees to distribute the entire net income to Granddaughter's children or issue.

Trust A provides that the trust will terminate (Termination Date) upon the death of the last survivor of Granddaughter, Spouse, GGC1, and GGC2 (measuring lives). Upon termination, the trust will be divided into equal shares to Granddaughter's children as are living at the death of the last survivor and to the then living issue of each child of Granddaughter who is deceased, the issue of each deceased child of Granddaughter to take *per stirpes* a share equal to the share which a child of Granddaughter would have taken if alive. If upon the Termination Date, there are no living children or issue of Granddaughter, then the trust estate will pass to Settlor's Grandson, and if he is deceased, to Grandson's issue, *per stirpes*. If none, the trust estate will pass, in equal shares, one-half to University A and one-half to University B.

After Spouse died, on Date 5, Trust A was divided, pursuant to court order and the statutes of State 1, into three separate trusts, one trust to benefit Granddaughter and her issue (Trust A1), one trust to benefit Granddaughter, GGC1 and GGC1's issue (Trust A2), and one trust to benefit Granddaughter, GGC2 and GGC2's issue (Trust A3). Trust A1 received one-half of the assets of Trust A. Trusts A2 and A3 each received one-half of the remaining assets.

Trust A1 provided that during Granddaughter's life, the trustees must pay Granddaughter all of the net income from the trust and the corporate trustee, in its sole discretion, may direct the trustees to distribute so much of the principal to Granddaughter and her issue, as the corporate trustee deems necessary for the support, maintenance, and education of such person. Upon Granddaughter's death, the remaining assets of Trust A1 would be distributed one-half to Trust A2 and one-half to Trust A3. Trust A1 retained the same Termination Date of Trust A. Upon the Termination Date, Trust A1 assets would be distributed in equal shares to Trust A2 and Trust A3. In the event, Granddaughter died without leaving children or issue, Trust A1 assets would be distributed, *per stirpes*, to Grandson's issue. If none, to University A and University B, in equal shares.

Trust A2 provided that the corporate trustee, in its sole discretion, may direct the trustee to distribute so much of the entire net income to Granddaughter, GGC1 and any of GGC1's issue. Any net income not distributed would be accumulated. Further, the corporate trustee, in its sole discretion, may direct the trustee to pay or expend for the benefit of Granddaughter, GGC1 and GGC1's issue any portion of the net income and so much of the principal as the corporate trustee deems necessary for the support, maintenance, and education of such person. Trust A3 contained the same provisions, except the beneficiaries included Granddaughter, GGC2 and GGC2's issue. Each trust retained the same Termination Date as Trust A. Upon the Termination Date, Trust A2 assets would be distributed to GGC1's children and to the then living issue of a deceased child, such issue to take *per stirpes*. Upon the Termination Date, the same provisions applied to Trust A3, except that the trust assets would be distributed to GGC2's children or issue. Trusts A2 and A3 also provided that, upon the Termination Date, in the event GGC1 or GGC2 died without leaving issue, the assets in his trust

would be distributed in equal shares to his brothers' children or issue. Further, in the event, upon the Termination Date, GGC1 and GGC2 die without leaving children or issue, then the trust assets would be distributed to Grandson's issue. If none, the trust assets would be distributed, in equal shares, to University A and University B.

After Granddaughter died, on Date 6, pursuant to court order and the statutes of State 1, Trust A2 was divided into six separate trusts. Trust 1 benefits GGC1, GGGC1 and GGGC1's issue. Trust 2 benefits GGC1, GGGC2 and GGGC2's issue. Trust 3 benefits GGC1 and GGC1's children and issue. Three other trusts (Trusts X, Y, and Z) were established to benefit GGC1's other children and that child's issue. This private letter ruling pertains to Trust 1, Trust 2, and Trust 3.

Trust 1 provides that the trustees are authorized to distribute so much of the net income, as the corporate trustee determines, in its absolute discretion, to GGC1, GGGC1 and GGGC1's issue. Further, the trustees are authorized to distribute so much of the principal for the support, maintenance, and education of GGC1, GGGC1 and GGGC1's issue, as the corporate trustee, in its sole discretion, determines appropriate. Trust 2 contains the same provisions, except that the beneficiaries include GGC1, GGGC2 and GGGC2's issue. Trust 3 provides that the trustees are authorized to distribute so much of the net income, as the corporate trustee determines, in its absolute discretion, to GGC1 and GGC1's issue. Further, the trustees are authorized to distribute so much of the principal for the support, maintenance, and education of GGC1 and GGC1's issue as the corporate trustee, in its sole discretion, determines appropriate.

Trusts 1, 2, and 3 retain the same Terminate Date as Trust A. Upon the termination Date, Trust 1 assets will be distributed outright to GGGC1, if living. Trust 2 assets will be distributed outright to GGGC2, if living, and Trust 3 assets will be distributed in equal shares to Trusts 1, 2, X, Y, and Z.

On Date 2, Settlor established Trust B, a revocable trust, for the benefit of Granddaughter, GGC1, and GGC2. Trust B was amended and restated on Date 3. Trust B became irrevocable upon Settlor's death on Date 4. Dates 2, 3 and 4 are all dates prior to September 25, 1985. Trust B contains the same income and principal distribution provisions, Termination Date, and dispositive provisions as Trust A, except that Spouse was not a beneficiary or a measuring life.

On Date 5, pursuant to court order and the statutes of State 1, Trust B was divided into three separate trusts, one trust to benefit Granddaughter and her issue (Trust B1), one trust to benefit Granddaughter, GGC1 and GGC1's issue (Trust B2), and one trust to benefit Granddaughter, GGC2 and GGC2's issue (Trust B3). These trusts contain the same provisions as the three divided trusts under Trust A.

After Granddaughter died, on Date 7, pursuant to court order and the statutes of State 1, Trust B2 was divided into six separate trusts. Trust 4 benefits GGC1, GGGC1 and GGGC1's issue. Trust 5 benefits GGC1, GGGC2 and GGGC2's issue and Trust 6 benefits GGC1 and GGC1's issue. Three other trusts (Trusts L, M, and N) were established, one for each of GGC1's other children and each child's issue. This private letter ruling pertains to Trusts 4, 5, and 6.

Trusts 4 and 5 contain the same income and principal provisions, Termination Date, and dispositive provisions as Trusts 1 and 2, respectively. Trust 6 contains the same income and principal provisions, Termination Date, and dispositive provisions as Trust 3, except that on termination Trust 6 assets will be distributed equally to Trusts 4, 5, L, M, and N. The current trustee of Trusts 1 through 6 is Trustee.

It is represented that no additions, actual or constructive, have been made to Trust A, Trust B, or Trusts 1 through 6 after September 25, 1985.

GGC1 and Trustee propose to establish six new trusts, Trusts 7 through 12, for the purpose of merging Trusts 1 through 6 into the newly established trusts. Trust 1 and Trust 4 benefit GGC1, GGGC1 and GGGC1's issue. Each of these trusts will merge into Trust 7 and Trust 10, respectively. Trusts 7 and 10 will retain the same income and principal distribution provisions as merged Trusts 1 and 4. Trusts 7 and 10 will not terminate until GGGC1 dies, as opposed to upon the death of the last to die of GGC2 and GGC1. However, Trusts 7 and 10 each grant GGGC1 a testamentary general power of appointment to appoint the trust assets of these trusts to GGGC1's issue and the creditors of GGGC1.

Trust 2 and Trust 5 benefit GGC1, GGGC2 and GGGC2's issue. Each of these trusts will merge into Trust 8 and Trust 11, respectively. Trusts 8 and 11 will retain the same income and principal distributions provisions as merged Trusts 2 and 5. Trusts 8 and 11 will terminate when GGGC2's dies, as opposed to upon the death of the last to die of GGC1 and GGC2. However, Trusts 8 and 11 each grant GGGC2 a testamentary general power of appointment to appoint the trust assets of these trusts to GGGC2's issue and the creditors of GGGC2.

Trust 3 and Trust 6 benefit GGC1 and GGC1's issue. Each of these trusts will merge into Trust 9 and Trust 12, respectively. Trusts 9 and 12 will retain the same income and principal distributions provisions as merged Trusts 3 and 6. Upon the death of the last to die of GGC1 and GGC2, Trust 9 will terminate and distribute in equal shares to Trusts 7, 8, X, Y and Z, and Trust 12 will terminate and distribute in equal shares to Trusts 10, 11, L, M, and N.

In addition, Trusts 7, 8, and 9, if not terminated earlier, will terminate on the date required by the rule against perpetuities in State 1 in effect on the date Trust A was created, and Trusts 10, 11, and 12, if not terminated earlier, will terminate on the date

required by the rule against perpetuities in State 1 in effect on the date Trust B became irrevocable.

At the time Trusts 7 and 10 terminate, to the extent GGC1 has not exercised her testamentary general power of appointment, the trustees shall distribute Trust 7 and 10 to GGC1's then living issue, *per stripes*, and if no such issue is then living, then to GGC1's issue, *per stirpes*. Similarly, at the time Trusts 8 and 11 terminate, to the extent GGC2 has not exercised her testamentary general power of appointment, the trustees shall distribute Trusts 8 and 11 to GGC2's then living issue, *per stripes*, and if no such issue is then living, then to GGC1's issue, *per stirpes*.

Trusts 7, 8, 10, and 11 each provide for the same default dispositive provisions as Trusts 1, 2, 4, and 5, respectively. To the extent GGC1 or GGC2 dies leaving no children or issue of a deceased child, the trust estates pass in equal shares to the trusts established to GGC1's other children. If the trusts for the other children have terminated and there are no other children or issue of deceased children of GGC1, the trust estates of Trusts 7, 8, 10, and 11 will pass to Grandson's issue, and if none, the trust estates will pass one-half to University A and one-half to University B.

It is represented that the purpose of the merger is to retain the assets of Trusts 1 through 6 in further trust after the death of GGC1 and GGC2 and to appoint successor trustees for Trusts 7 through 12. Currently, Trusts 7 through 12 are not funded and it is represented that these trusts will remain unfunded until the mergers. It is represented that all of the current and remainder beneficiaries of Trusts 1 through 6 have consented to the proposed mergers.

Statute 1 provides that a trustee may declare one or more new trusts for the purpose of merging all, or a portion, of an existing trust or trusts with and into the new trust or trusts, whether or not created by the same trustor and whether or not funded prior to the merger, to be held and administered as a single trust if such a merger would not result in a material change in the beneficial interests of the trust beneficiaries, or any of them in the trust.

Statute 2 provides that a trustee, without authorization by the court, may exercise powers conferred by the terms of the trust; and except as limited by the terms of the trust, any other powers conferred by this chapter.

Statute 3 provides that whenever a trust (a transferor trust) is merged with and into another trust (the transferee trust) the separate existence of the transferor trust shall cease and the transferee trust shall possess all of the rights and privileges, and shall be subject to all of the obligations of, the transferor trust.

RULING REQUESTED

You have requested a ruling that upon merging Trust 1 into Trust 7, Trust 2 into Trust 8, Trust 3 into Trust 9, Trust 4 into Trust 10, Trust 5 into Trust 11, and Trust 6 into Trust 12, Trust 7 through 12 will remain exempt from GST tax under § [26.2601-1\(b\)](#).

LAW AND ANALYSIS

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer.

Section [2611\(a\)](#) provides that the term “generation-skipping transfer” means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Under section 1433 of the Tax Reform Act of 1986 (the Act), 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\(b\)\(1\)\(i\)](#) 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 corpus added to the trust by an actual or constructive addition after September 25, 1985.

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 GST tax under § [26.2601-1\(b\)](#) will not cause the trust to lose its exempt status. These rules 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\(b\)\(4\)\(i\)\(D\)](#) 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 generation-skipping transfer or the creation of a new generation-skipping transfer.

Section [26.2601-1\(b\)\(4\)\(i\)\(E\)](#) Example 6, provides the following example of a merger of two trusts exempt from GST tax. In 1980, Grantor established an irrevocable trust for Grantor's child and the child's issue. In 1983, Grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and Grantor's trusts are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in section [2651](#)) than the person or persons who held the beneficial interest prior to the merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust that resulted from the merger will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

In the instant case, although initially administered in State 1, Trusts 1 through 6 have been administered in State 2 since the appointment of Trustee, who has its principal place of business in State 2. Therefore, State 2 law is applicable. The merger of Trusts 1 through 6 (Transferor Trusts) into Trusts 7 through 12 (Transferee Trusts), respectively, is permitted under State 2 law if such merger would not result in a material change in the beneficial interests of the trust beneficiaries. Statute 1. Statute 2 provides that a trustee may act under Statute 1 without authorization by the court. Statute 3 provides that, following the merger, the governing instruments of Transferee Trusts control the disposition of the property of their respective Transferor Trusts.

During the lifetime of GGC1 and GGC2, the dispositive terms of the Transferor Trusts and their respective Transferee Trusts are the same. After the merger, Trusts 9 and 12 will terminate upon the death of the survivor of GGC1 and GGC2, Trusts 7 and 10 will terminate on the date of GGGC1's death, and Trusts 8 and 11 will terminate on the date of GGGC2's death. However, Trusts 7, 8, and 9, if not terminated earlier, will terminate on the date required by the rule against perpetuities in State 1 in effect on the date Trust A was created, and Trusts 10, 11, and 12, if not terminated earlier, will terminate on the date required by the rule against perpetuities in State 1 in effect on the date Trust B became irrevocable. In addition, GGGC1 is granted a general power of appointment over Trusts 7 and 10, which will cause Trusts 7 and 10 to be includible in the gross estate of GGGC1 at her death under § 2041(a)(2). Further, GGGC1 will be treated as the transferor of the corpus of Trusts 7 and 10 for GST tax purposes under § 2652(a)(1). Similarly, GGGC2 is granted a general power of appointment over Trusts 8 and 11, which will cause Trusts 8 and Trust 11 to be includible in the gross estate of GGGC2 at her death under § 2041(a)(2). Further, GGGC2 will be treated as the transferor of the corpus of Trusts 8 and 11 for GST tax purposes under § [2652\(a\)\(1\)](#)

Accordingly, the terms of Trusts 7 through 12 will not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property beyond the period provided for in the original trusts, Trust A and Trust B. Moreover, Trusts 7 through 12 will 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 trustee action.

Therefore, based on the facts submitted and representations made, we conclude that upon the merger of Trust 1 into Trust 7, Trust 2 into Trust 8, Trust 3 into Trust 9, Trust 4 into Trust 10, Trust 5 into Trust 11 and Trust 6 into Trust 12, the Transferee Trusts (i.e. Trusts 7 through 12) will be exempt from GST tax under § 26.2601-1(b)

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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

Sincerely,

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

Enclosures (2)

Copy of this letter
Copy of § 6110 purposes

cc: