Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 2601-00.00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4-PLR-106975-99
Date:
August 6, 1999

Re:

Legend

Settlor =
Spouse =
Child A =

Child B =

Trust =

State =
Date 1 =
Date 2 =

This is in response to your letter dated March 16, 1999, in which you request several rulings concerning the partition of Trust.

On Date 1, prior to September 25, 1985, Settlor established an irrevocable trust (Trust). Under the terms of Trust, the income may be distributed, in the trustee's discretion, to Settlor's spouse (Spouse) for life. Upon the death of Spouse, and prior to the termination of the Trust, the trustee is to distribute all the trust income to Settlor's issue surviving at the dates of payment, in equal shares by right of representation. Trust will terminate 21 years after the death of the last survivor of Spouse, Child A, and Child B. Upon termination, the trust corpus is to be distributed outright to those then currently entitled to receive the trust income in the same proportions in which they are entitled to share income. It is represented that Spouse has died, survived by Child A and Child B, the only children of Settlor.

On Date 2, a court in State entered an order, subject to the issuance of a private letter ruling, dividing Trust into two

equal shares, to be held in separate trusts. One trust is to be held for the benefit of Child A and Child A's issue, and the other trust is to be held for the benefit of Child B and Child B's issue. Each trust will have the same dispositive provisions as Trust except for the respective beneficiaries. That is, the income from Child A's trust will be paid to Child A for life and then to Child A's issue, per stirpes. Similarly, the income from Child B's trust will be paid to Child B for life, and then to Child B's issue, per stirpes. Each trust will terminate 21 years after the death of the last to die of Spouse, Child A, and Child B. On termination, each trust will be distributed to the issue of the respective child for whom the trust was established who are then entitled to receive trust income, in the same proportions in which they are entitled to share income. If a child and all that child's descendants die prior to the termination of the Trust, then the corpus of the deceased child's share will be added to the other trust.

The judicial order requires that the division of assets be accomplished, to the extent practical, by allocating one-half of each asset of the Trust at the time of division to each trust. The order also provides that the trustees of Trust shall continue as trustees of the two separate trusts, but it is not necessary for the trustees of both trusts to be the same persons or entities. Any trustee vacancy is to be filled as provided under Article Fourth of Trust.

It is represented that no additions have been made to the Trust after September 25, 1985.

You have requested a ruling that the division of Trust will not cause the Trust or the partitioned trusts to lose exempt status for generation-skipping transfer tax purposes under § 1433(b)(2)(A) of the Tax Reform Act of 1986.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 26, 1986.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. However, this exemption does not apply to additions (actual or constructive) that are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust that is otherwise exempt from the application of Chapter 13 (the GST tax)

under § 1433(b)(2)(A) of the Act, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of Chapter 13.

A modification of a trust that is otherwise exempt for GST tax purposes under the 1986 Act will generally result in a loss of the trust's exempt status if the modification changes the quality, value, or timing of any powers, beneficial interests, rights or expectancies originally provided for under the terms of the trust.

You have represented that the Trust was irrevocable on September 25, 1985, and no additions have been made to the Trust after that date.

We conclude that the partition of Trust will not alter the quality, value or timing of any powers, or beneficial interests, rights or expectancies originally provided for under the terms of the Trust. Accordingly, the court order dividing the Trust into equal shares, to be held in separate trusts, will not affect the exempt status of the Trust, or the partitioned trusts, for GST purposes.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

(signed) George L. Masnik

By _____
George Masnik
Chief, Branch 4

Enclosure
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