

Internal Revenue Service

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Department of the Treasury

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CC:DOM:P&SI:4 - PLR-113223-99

Date: March 13, 2000

Re:

Legend:

Trust =

Grantor =

Spouse =

Trustee =

Son =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

Grandchild 6 =

Date 1 =

Date 2 =

Date 3 =

State =

Dear :

This is in response to your letter dated February 8, 2000, and prior correspondence, in which you requested rulings concerning the estate and generation-skipping transfer (GST) tax consequences of a proposed exercise of a power of appointment.

On Date 1, Grantor created Trust. Trust is for the benefit of the issue of Son. On Date 2, Trust was amended in its entirety.

Paragraph (A) of Article III of the Trust provides that Trustee is to pay the net income for the health, education and support in reasonable comfort, from time to time, to or for the benefit of issue of Son who are living at the inception of Trust or thereafter born as Trustee determines in his discretion.

Paragraph (B) of Article III of the Trust provides that Trustee may pay such amounts of principal of Trust to any beneficiary if Trustee determines such beneficiary is in need of additional funds to provide adequately for his or her health, education and support in reasonable comfort.

Paragraph (C) of Article III of the Trust states:

Notwithstanding the provisions relating to distribution enumerated in the previous two paragraphs, all or any portion of the balance remaining in the trust estate shall be distributed to, among, or for the benefit of such members of a class consisting of the issue of [Son] in such shares or proportions, whether outright or to be continued in this or any other trust and at such time or times as [Son] may at any time or from time to time designate and appoint in and by a written instrument, signed by [Son], acknowledged by him before a Notary Public and delivered to Trustee during his lifetime, or by his Will which, in either case, specifically refers to such limited power of appointment. With respect to any such remaining balance to be continued in this or any other trust, Trustee shall distribute to and among such specific separate trust shares or separate trusts for such issue of [Son] such specific assets of the trust estate, dollar amounts, shares or proportions as [Son] may designate or appoint under the terms of this limited power of appointment. In no event, however, shall [Son] have the power to appoint to or for the benefit of himself, his creditors, his estate, or the creditors of his estate.

Article IV of the Trust provides that, if Son does not exercise the above described power of appointment, then upon the death of Son, Trustee is to divide Trust into equal shares for each child of Son then living and for each child of Son deceased leaving issue then living. Each share for a child or other issue will be held in trust until age 35. A beneficiary may withdraw all or a part of his trust at age 35.

Paragraph (H) of Article V of the Trust provides that Trust and any trust created by the exercise of the power of appointment pursuant to Paragraph (C) of Article III shall not continue for more than 21 years after the last to die of the Grantor, Son and the issue of Son in being at the date the Trust becomes irrevocable.

Article IX of the Trust provides that Trust becomes irrevocable upon the death of Grantor or Spouse, whichever is the first to die.

On Date 3, Spouse died and Trust became irrevocable. Grandchildren living on Date 3 were Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4 and Grandchild 5. Grandchild 6 died prior to Date 3 and was not survived by issue. Grandchild 1, Grandchild 2, Grandchild 3,

Grandchild 4, and Grandchild 5 had no issue as of Date 3. It is represented that no additions have been made to Trust since it became irrevocable.

Son proposes to create separate trusts for each of his now living children. Son will initially fund each trust with property having nominal amount of value. It is represented that Son will allocate to each trust a portion of his GST exemption available under § 2631(a) of the Internal Revenue Code that will be equal to the value of the property transferred to each trust. It is also represented that, except for the beneficiary, the provisions of each of these trusts will be the same and that each trust will have a separate trustee.

Article II of each child's trust provides that, during Son's life, trustee has discretionary authority to pay or apply income to the child or the child's issue, during child's life for health, education, support, or maintenance. Any income not paid or applied is to be added to principal.

Article III provides that, upon Son's death, trustee has discretionary authority to pay or apply income and principal to child or the child's issue for health, education, support and maintenance.

Paragraph 3.1(e)(1) of Article III provides that, if a child dies prior to the termination of the trust, the income and principal is to be distributed to then living issue of the child, per stirpes.

Paragraph 3.1(e)(2) of Article III provides that, if a child leaves no then surviving issue, such income and principal is to be distributed to then surviving issue, per stirpes, of such child's nearest ancestor leaving issue then surviving who is a descendant of Son.

Paragraph 3.2 of Article III provides that, if there is no beneficiary eligible to receive income and principal of any trust, the income and principal is to be distributed to persons then living who would have inherited the estate of Son if Son had then died intestate under the laws of State.

Paragraph 3.3 of Article III provides that any trust created shall terminate twenty (21) years after the death of the last life in being who is an issue of Son and who was alive on Date 3, the date Grantor's Trust became irrevocable.

Son also proposes to execute a codicil to his will in which he will exercise the power of appointment granted to him pursuant to Paragraph (C) of Article III of Trust and appoint the property from the Trust in equal shares to each child's trust. If one or more of the children predecease Son without leaving issue, the child's share is to be allocated equally to the other trusts for then living children or then living issue of children who predecease Son.

Son has requested the following rulings:

1. Son's proposed exercise of the power of appointment granted in the Trust will not cause the property to be includible in his estate under § 2041(a).

2. Assets appointed from the Trust to each child's trust will be exempt from generation-skipping transfer tax under § 2601.

Ruling Request 1

Section 2041(a)(2) of the Code provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b) provides that the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Under § 2041(b)(1)(A), a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to health, education, support, or maintenance of the decedent is not a general power of appointment.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that a power of appointment is not a general power if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate or (b) expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

In the present case, the power of appointment granted to Son under Paragraph (C) of Article III of the Trust is exercisable only in favor of such members of a class consisting of the issue of Son. Thus, under § 2041(b) and § 20.2041-1(c)(1), Son's power of appointment is not a general power of appointment. Accordingly, based on the representations made and the facts represented, we conclude that Son's proposed testamentary exercise of the power of appointment will not cause the property to be includible in Son's estate under § 2041(a).

Ruling Request 2

Section 2601 imposes a tax on every generation-skipping transfer made by a "transferor" to a skip person (a person assigned to a generation that is 2 or more generations below the generation assignment of the transferor) after October 22, 1986.

Under § 1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 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, the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985 will be considered irrevocable unless the settlor possessed a power that would have caused the trust to be included in the settlor's gross estate under §§ 2038 or 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(1)(v)(B) provides a special rule for certain powers of appointment. This section provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) will not be treated as an addition to a

trust if: (1) such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b)(1); and (2) in the case of an exercise, such power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years (the perpetuities period).

Section 2631(a) provides that every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2652(a)(1) provides generally, that the term "transferor" means--(A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual is treated as transferring any property with respect to which the individual is the transferor.

Section 2654(b)(1) provides that, for chapter 13, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts.

Section 26.2654-1(a)(2)(i) provides that, if there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13.

In the present case, Son proposes to create five separate trusts, one for each of his children. Son will initially fund each of the trusts with property that has a nominal amount in value and will allocate a portion of his GST exemption available under § 2631(a) that will be equal to the value of the property transferred to each trust. Son will be treated as the transferor with respect to the value of the property transferred to the trusts. Section 2652(a)(1)(B).

In addition, Trust became irrevocable before September 25, 1985 and no additions, either actual or constructive, have been made to Trust since that date. Son intends to execute a codicil to his will in which he will exercise the power of appointment granted in Paragraph (C) of Article III of Trust by appointing the property in equal shares to each trust established for his children. Each child's trust shall terminate twenty (21) years after the death of the last life in being who is an issue of Son and who was alive on Date 3, the date Trust became irrevocable. Thus, Son is not proposing to exercise his power of appointment in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date Trust became irrevocable, extending beyond any life in being at that date plus a period of 21 years. Accordingly, based on the representations made, we conclude that the assets appointed from the Trust to each child's trust will be exempt from generation-skipping transfer tax under § 2601.

Except as specifically ruled 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.

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

Sincerely yours,

James F. Hogan
Acting Assistant to the Branch Chief
Branch 4

Enclosure

Copy for section 6110 purposes

cc: