

Internal Revenue Service

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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:
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PLR-130692-04

Date:
June 02, 2005

Re:

LEGEND:

Settlor	-
Trust	-
Date 1	-
Date 2	-
Child	-
Year 1	-
\$x	-
\$Y	-
\$Z	-

Dear :

This is in response to a letter dated May 27, 2004, submitted by your authorized representative requesting a ruling under section 2601 of the Internal Revenue Code.

Settlor created and funded an irrevocable trust on Date 1, for the primary benefit of Settlor's child (Child). Under the terms of Trust, after Child reaches age 21, income is to be paid to Child at the discretion of the trustee and any income not distributed is to be accumulated and added to principal. On Child's death, the corpus is to be distributed pursuant to Child's limited power to appoint the corpus among Child's issue.

Under Article THIRD of Trust, Child has the right to withdraw one-sixth of the principal balance determined as of the date Child attains age 30; one-fifth at age 35, and one-fourth at age 40. The trust also provides that "in calculating the principal subject to withdrawal . . . there shall be subtracted from the then principal balance on the stated valuation dates any principal already subject to the right of withdrawal which has not yet been withdrawn." The withdrawal right is cumulative and does not lapse. Child reached age 35 on Date 2, at which time the value of the trust was \$X. Accordingly, the amount that Child could withdraw on that date is \$Y.

To date, child has withdrawn \$Z of that amount, leaving approximately \$Y-Z that Child can withdraw at any time. When Child attains age 40 in Year 1, an additional amount of corpus (25% of the trust corpus less withdrawals not exercised) will be subject to Child's withdrawal power. However, after that date, the maximum amount Child can withdraw will be frozen at a specified sum.

The trustee has asked for a ruling that the failure of Child to exercise the withdrawal right does not constitute a constructive addition to the trust.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

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 GST tax provisions do not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985. However, this exemption does not apply to GST transfers allocable to additions that are made to the trust after September 25, 1985. In addition, the exemption does not apply to property transferred from a pre-September 25, 1985 trust pursuant to the exercise, release, or lapse of a general power of appointment created under the terms of the trust that is treated as a taxable transfer for estate or gift tax purposes.

Section 2041(a)(2) provides for the inclusion in the gross estate of any property over which the decedent possesses, at the time of his death, a general power of appointment created after October 21, 1942. Section 2041(b)(1) provides that the term "general power of appointment" means a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except that a power to consume property for the benefit of the decedent that is limited by an ascertainable standard relating to health, education, support, or maintenance of the decedent is not deemed a general power of appointment.

Section 26.2601-1(b)(1)(v) discusses certain "constructive additions" that are treated as post-September 25, 1985 additions to the trust. Section 26.2601-1(b)(1)(v)(A) provides that where any portion of trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a general power of appointment over

that portion of the trust that is treated a taxable transfer for estate or gift tax purposes is treated as an addition to the trust. In general, the release, etc. is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. To the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12, the rules under § 26.2652-1 apply for determining the identity of the transferor of property for purposes of chapter 13.

Section 26.2601-1(b)(1)(vi) provides that except to the extent of paragraphs (b)(1)(iv) (additions to irrevocable trusts) and (v) (constructive additions) of this section, post-1985 appreciation in the value of a grandfathered trust and post-1985 undistributed income of a grandfathered trust are not considered additions to the principal of a trust.

In this case, Child as a lifetime power to withdraw an amount from Trust and this power constitutes a general power of appointment with respect to Trust. Currently, Child can withdraw \$Y-Z. On Child's death, Child's lifetime power will lapse and any amount subject to the Child's withdrawal power at the time of death will be included in Child's gross estate under § 2041, and Child will become the transferor of this amount for GST purposes. See § 26.2601-1(b)(1)(v)(D), Example 1. Accordingly, we conclude that Child has not made a constructive addition to Trust because Child's failure to exercise the withdrawal right does not constitute a constructive addition to the trust.

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.

Pursuant to a Power of Attorney on file, a copy of this letter is being sent to your authorized representative.

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
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter