199926038

Internal Revenue Service

Department of the Treasury

Index Number: 2601.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:7-PLR-113478-98
Date: MAR 31 1999

Grandchild =

Trust =

a =

Decedent =

Daughter =

Dear Sir or Madam:

In a letter, dated , you requested a ruling that Grandchild's exercise of a testamentary limited power of appointment will not cause the Trust to lose its status as exempt from the generation-skipping transfer (GST) tax imposed by chapter 13 of the Internal Revenue Code. This letter responds to your request.

The facts and representations submitted are summarized as follows: On a, Decedent established the Trust for the benefit of Grandchild. During Grandchild's life, the trustees are to pay so much of the income and also so much of the principal (even to the extent of all of the income and principal) as the trustees may in their discretion determine from time to time to one or more of the persons within a group consisting of Grandchild and Grandchild's issue living from time to time during Grandchild's life. So much of the income as is not so paid is to be accumulated and income so accumulated is to be added to and dealt with as principal; provided, however, that if any Trust beneficiary is acting as co-trustee, the other trustee or trustees who are not Trust

beneficiaries are to have the exclusive right to exercise all discretion with respect to payments of income or principal.

On Grandchild's death, the trustees are to distribute the then remaining principal (if any) as Grandchild may appoint by Grandchild's last will and testament (subject to certain restrictions), or in default of or subject to the appointment to Grandchild's then living issue, or in default thereof to Daughter's then living issue, *per stirpes*; provided that any unappointed principal becoming distributable to Daughter's issue other than the descendants of Grandchild is to be added to and dealt with for all purposes as part of the trust or trusts.

Grandchild's power of appointment is subject to the following restrictions:

1. The power may not be exercised in favor of Grandchild's estate, Grandchild's creditors, or creditors of Grandchild's estate. The power may be exercised only in favor of one or more of Decedent's issue, provided, however that income only may be appointed to widows of Decedent's issue.

2. The power may be exercised by Grandchild's last will signed before or after the date of the Trust agreement, but the testamentary power shall not be deemed exercised unless Grandchild specifically identifies the power and expressly declares the intention to exercise the power – absent such identification of the power and declaration of intention, the power shall be deemed unexercised.

3. Grandchild may appoint outright or subject to further trusts or limitations or conditions and may grant further powers to appoint but no beneficial interest may be so appointed to anyone who is not an object of the power, and no power created by the Trust Agreement and no further power created by exercising the power created by the Trust Agreement may be exercised to postpone vesting, or suspend ownership or power of alienation, for a period ascertainable without reference to the date of the Trust Agreement.

Grandchild proposes to execute a Codicil to Grandchild's will to exercise the testamentary limited power of appointment. The Codicil will provide that the assets of the Trust are to continue in trust under the terms of the Trust Agreement, except to the extent modified by the Codicil. The modifications relate to successor trustee(s) and the termination of the Trust. With respect to the termination of the Trust, the Codicil will provide that notwithstanding any other provisions of the Codicil, each trust, if not previously terminated under other provisions of the exercise of the power of appointment or the Trust Agreement, in any event is to terminate on the expiration of 21 years following the death of the survivor of Decedent and such of Decedent's issue as

were in being on the date of the Trust Agreement. On the termination, all the assets of the Trust are to be distributed to the person or persons entitled thereto under the terms of the Trust Agreement.

It has been represented that the Trust was irrevocable on September 25, 1985, and there have been no additions to it since that date.

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust (as defined in § 2652(b)) in existence on September 25, 1985, is considered an irrevocable trust.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not 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, the 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 plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of § 26.2601-1(b)(1)(v)(B)(2), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership, or the power of alienation beyond the perpetuities period. If a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

Based on the information submitted and the representations made, we conclude that: (1) the Trust is exempt from the GST tax because it was created, funded, and irrevocable on September 25, 1985, and no additions (actual or constructive) have been made to it since that date; and (2) Grandchild's exercise of the testamentary limited power of appointment will not be treated as a constructive addition to the Trust. Accordingly, Grandchild's exercise of the testamentary limited power of appointment will not cause the Trust to become subject to the GST tax.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision 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.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

(signed) Joseph H. Makurath
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)