

Recent Developments in Estate Planning

Recent Transfer Tax Letter Rulings

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PLR 201833015

“Division of Pot Trust into Share Trusts Does Not Constitute Gift, Trigger Loss of GST Exemption”

- Before September 25, 1985, trustor established an irrevocable “pot” trust for the benefit of his granddaughter and her issue.
- Upon the trustee’s state court petition, the terms of the trust were modified so that the trust would be divided upon the granddaughter’s death into separate share trusts for the benefit of the granddaughter’s then-living issue.
- Perpetuities period remained unchanged.
- The Service confirmed that the partition of the trust:
 - Did not constitute a taxable gift among the beneficiaries.
 - Would not cause the trust to lose its GST exempt status.
 - Was not a disposition upon which gain or loss would be recognized.



PLR 201832009

“ING Trust Effective Where Grantor Can Veto Distributions or Appoint Principal During Lifetime for HEMS”

- Grantor created an “ING” trust for the benefit of himself, his wife, his descendants, his parents, and another individual.
- Distribution committee initially consists of grantor, his parents, and representatives of his minor children.
- During Grantor’s lifetime, the trustee is directed to make distributions as follows:
 - By a majority of the distribution committee, with grantor’s consent;
 - By the unanimous distribution committee other than grantor; or
 - As appointed by grantor in a non-fiduciary capacity to any other beneficiary for health, education, maintenance or support.
- Service concluded:
 - Trust was not a grantor trust under §§ 673, 674, 676, 677 or 679.
 - Could be a grantor trust under § 675, depending on circumstances.
 - Grantor’s funding of trust is not a completed gift.
 - Distributions to grantor are not completed gifts by any member of the committee.
 - Distributions to other beneficiaries are not completed gifts by any member of the committee, but will be gift by grantors.
 - No member of the committee has a general power of appointment.



PLR 201838005

“ING Trust Effective Where Grantors Can Veto Distributions or Appoint Principal During Lifetimes for HEMS, Plus Community Property Retains Its Character”

- Grantors, who lived in community property state, established an “ING” trust in a different state for the benefit of themselves, their children, and their respective mothers.
- Power of appointment committee initially consists of grantors, their mothers, and representatives of their minor children.
- During Grantors’ lifetimes, the trustee is directed to make distributions as follows:
 - By a majority of the power of appointment committee, with grantors’ consent;
 - By the unanimous power of appointment committee other than grantors; or
 - As appointed by either grantor in a non-fiduciary capacity to any beneficiary for health, education, maintenance or support.
- Service concluded:
 - Trust is not a grantor trust under §§ 673, 674, 676, 677 or 679.
 - Could be a grantor trust under § 675, depending on circumstances.
 - Grantors’ funding of trust is not a completed gift.
 - Distributions to grantors are not completed gifts by any member of the committee.
 - Distributions to other beneficiaries are not completed gifts by any member of the committee, but will be gift by grantors.
 - No member of the committee has a general power of appointment.
 - Basis in all community property will receive step-up on death of first grantor to die.

PLR 201807001

“Reformation Recognized by Service Where Mistake Caused Trust with Foreign Grantor to Not Qualify As Grantor Trust”

- Grantor, a non-U.S. person, created a trust intended to be a grantor trust.
- Shortly thereafter, Section 672(f) was amended to provide that trust with foreign grantor could be a grantor trust only if distributions were limited to grantor and spouse during grantor’s lifetime.
- Trust allowed for distributions to grantor, spouse and grantor’s descendants during grantor’s lifetime.
- Trust was not grandfathered.
- Trust was reformed in state court to exclude grantor’s issue as present beneficiaries based on mistake of fact and law.
- Service concluded that reformation was consistent with state law, and trust would be treated as grantor trust from inception.



PLR 201837007

“Reformation Recognized by Service Where Trust Unintentionally Conferred General Powers of Appointment on Beneficiaries”

- Trust created for the benefit of the Grantor’s grandchildren contained two drafting errors:
 - (1) each beneficiary was mistakenly given the right to withdraw the entire amount of any contribution to that beneficiary’s share, not limited to the amount of the annual exclusion, causing the beneficiaries to possess general powers of appointment, and
 - (2) the lapse of the withdrawal rights was not limited to the greater of 5-and-5, causing a lapse to be treated as a taxable transfer by said beneficiary.
- Upon discovery of these errors, the trust was reformed in state court.
- Service concluded:
 - (1) the beneficiaries did not possess general powers of appointment,
 - (2) the judicial reformation of the trust did not constitute the exercise or release by a beneficiary of a general power of appointment,
 - (3) the lapse of any beneficiary’s withdrawal right did not result in a taxable gift, and
 - (4) the trust property will not be included in the beneficiaries’ gross estates, except to the extent of each beneficiary’s withdrawal rights under the reformed trust instrument.

PLR 201834005

“Extension Permitted for GST Allocation”

- Decedent died leaving behind a trust with “GST potential.”
- The estate’s CPA prepared and filed a Form 706, but failed to allocate the decedent’s available GST exemption to the trust.
- Finding that the estate acted reasonably and in good faith (as required under Section 301.9100-3), the Service granted the estate an extension of time of 120 days to allocate Decedent’s available GST exemption.

PLR 201831003

“Beneficiary’s Disclaimer May Be ‘Qualified’ If Made Within Nine Months of Learning of Interest”

- Before January 1, 1977, grantor created an irrevocable trust for the benefit of Beneficiary and her issue.
- Beneficiary validly exercised her limited testamentary power of appointment in favor of the then-living descendants of the marriage of her Great-uncle and Great-aunt.
- After Beneficiary’s death, one of the beneficiaries of the exercise of the LTPOA sought to disclaim his interest and avoid gift tax implications under Section 2511.
- The Service concluded:
 - Because the trust was created before 1977, disclaimer is not a gift if made within a “reasonable time” of beneficiary learning of the transfer (as opposed to running from the time of the transfer itself).
 - Nine months is a “reasonable time.”
 - No gift tax imposed.

PLR 201831009 JS1

“QTIP Trust Pouring Over Into Private Foundation is Not Subject to Private Foundation Rules During Lifetime of Surviving Spouse”

- Upon death of grantor, marital QTIP trust is held for the benefit of grantor’s spouse.
- Upon death of grantor’s spouse, trust assets are paid to an exempt private foundation.
- The Service concluded that the trust, during grantor’s spouse’s lifetime, is generally not subject to the private foundation rules, as it is neither a charitable trust within the meaning of § 4947(a)(1) nor a split-interest trust within the meaning of § 4947(a)(2).
- Likewise, during the lifetime of grantor’s spouse, the direct and indirect self-dealing rules of § 4941 will not apply.
- On the grantor’s spouse’s death, all the assets of the trust will be includible in the spouse’s gross estate under § 2044. Then, the estate tax charitable deduction will be allowable because the marital trust property will be paid to the private foundation. However, the regulations under § 4947 provide that the trust won’t be considered a charitable trust (and thus subject to the PF rules) during the time reasonably required for the trustee to perform the ordinary duties of administration to settle the trust.

PLR 201830008

“Retroactive Relief from Missed QSST Election Permitted”

- The trust in question was a permitted S corporation shareholder pursuant to § 1361(c)(2)(A)(i) but ceased to qualify as such when the Grantor died.
- Thereafter, the S corp shares were transferred to a second trust, which was qualified to elect to be a Qualified Subchapter S Trust (“QSST”) within the meaning of § 1361(d)(3); however, the initial current income beneficiary of Trust 2 failed to timely file a QSST election for Trust 2. Therefore, Trust 2 was an ineligible shareholder of the S corp and the company’s S election terminated.
- The second beneficiary then died and the remainder income beneficiary became the current beneficiary and sought to have the company’s S election reinstated.
- The Service concluded that the termination of the S election was due to the second beneficiary’s inadvertent failure to make the QSST election.
- Therefore, upon filing of a retroactive QSST election within 120 days of the date of the PLR, the company’s S election would be reinstated retroactive to date when the S election was terminated.

Presenter



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