

**Internal Revenue Service**

Department of the Treasury

Number: **200338002**

Washington, DC 20224

Release Date: 09/19/2003

Index Number: 2632.01-00; 9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-108134-03

Date:

June 9, 2003

In Re:

LEGEND:

- Trust =
- Taxpayer 1 =
- Taxpayer 2 =
- Taxpayers =
- Partnership =
- Accounting Firm =
  
- Accountant =
- Date 1 =
- Date 2 =
- a =
- b =

Dear :

This is in response to your letter dated December 31, 2002, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make allocations of Taxpayers' generation-skipping transfer (GST) tax exemptions to certain transfers to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayer 1 formed an irrevocable trust (Trust) for the benefit of Taxpayer 1's issue.

Article III.3.1 of the Trust provides the trustees with the discretion to pay or accumulate and add to principal, all or a portion of the Trust's net income to Taxpayer 1's issue. Article III.3.2 provides trustees with the power to invade trust principal to provide for the health, support, maintenance, and education of any or all of Taxpayer 1's issue. Payments of income or principal need not be equalized among Taxpayer 1's issue.

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Article III.3.3 provides that when all of Taxpayer 1's children have completed their education or have attained age 25 (whichever occurs first), or at such earlier time determined by the trustees in their sole discretion, the trust estate is to be divided and allocated one equal share (Trust Share) each to Taxpayer 1's then living children and Taxpayer 1's deceased children with then living issue.

Article III.3.311 provides the trustees of each living child's Trust Share with the discretion to pay or accumulate and add to principal, all or a portion of the Trust Share's net income to the child and the child's issue. Payments of income need not be equalized among the child and the child's issue.

Article III.3.312 provides that, in the event the trustees determine that the Trust Share's net income and the child's other resources are insufficient, the trustees may distribute to the child or the child's issue as much of the Trust Share's principal as is necessary to provide for their reasonable health, support, maintenance, and education. Payments of principal need not be equalized among the child and the child's issue.

Article III.3.313 provides the child, in his or her will, with a power to appoint the remaining balance of the child's Trust Share among the child's spouse and Taxpayer 1's living issue. Trust Share assets not appointed are to be distributed to the child's then living issue by right of representation, if any; if none, to Taxpayer 1's then living issue by right of representation, provided that any assets distributed to a current income beneficiary of the Trust or a Trust Share shall be added to the Trust or Trust Share and administered as part thereof.

Article III.3.32 provides that each Trust Share allocated to a deceased child with living issue, is to be distributed among the child's spouse and then living issue in accordance with the child's exercise of a power of appointment over the Trust Share in the child's will. Trust Share assets not appointed are to be distributed to the deceased child's then living issue by right of representation.

Article III.3.4 provides that, if all of Taxpayer 1's issue die prior to the Trust's or any Trust Share's final distribution, the then remaining trust estate is to be distributed one-half to Taxpayer 1's heirs and one-half to Taxpayer 2's heirs as if Taxpayers had died intestate on the date of death of the last to die of Taxpayers and Taxpayer 1's issue.

On Date 2, Taxpayers transferred to the Trust limited partnership units in Partnership. Taxpayers retained Accounting Firm to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Accounting Firm, in preparing Taxpayers' Forms 709, inadvertently failed to allocate Taxpayers' GST exemptions to their respective Date 2 transfers to the Trust. Taxpayer 1 reported the value of the limited partnership interests he transferred at \$a, and Taxpayer 2 reported the value of the limited partnership interests she transferred at \$b.

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Sometime later, in reviewing Taxpayers' Forms 709 reporting the Date 2 transfers, Accountant discovered Accounting Firm's failure to allocate Taxpayers' GST exemptions to the transfers to the Trust. Taxpayers have represented that they have sufficient remaining GST exemption amounts available to apply to the Date 2 transfers to the Trust.

Taxpayers are requesting an extension of time under §§ 2642(g)(1) and 301.9100-3 to allocate their GST exemptions to their respective Date 2 transfers to the Trust, and rulings that the amounts of such allocations will be based on the gift tax values of the property transferred to the Trust on Date 2 and that the allocations will be effective as of Date 2.

#### LAW and ANALYSIS:

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

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be 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, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

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Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

As applicable during the year at issue, § 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] – (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12, and (B) such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2624(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except Subtitles E, G, H, and I.

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Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayers are granted an extension of time of sixty (60) days from the date of this letter to allocate their respective available GST exemption amounts to their respective Date 2 transfers to the Trust. Once made, the allocations will be effective as of Date 2. The amount of each allocation is to be based on the value of the property transferred by each Taxpayer to the Trust on Date 2.

These allocations should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 709. Two copies are enclosed for this purpose. The rulings contained in this letter are based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding the value of the property Taxpayers transferred to the Trust on Date 2 for federal transfer tax purposes.

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In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the Taxpayers.

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

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: Copy for § 6110 purposes  
Two copies of this letter

cc: