

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09 – PLR-101038-04

Date:

April 02, 2004

Legend:

Taxpayer 1 =

Date 1 =

Taxpayer 2 =

Trust =

Son =

Granddaughter =

Grandson =

Son's Trust =

Granddaughter's =

Trust =

Grandson's Trust =

A =

Partnership =

B =

C =

D =

E =

Accounting Firm =

Year 1 =

Year 2 =

Dear :

This is in response to your letter dated November 23, 2003, on behalf of Taxpayer 1, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer 1 and Taxpayer 2 established the Trust, an irrevocable trust for the benefit of their son, granddaughter, and grandson. Article III, paragraph 3.1 provides for the creation of a separate irrevocable trust (Son's Trust) for the use and benefit of Son during his lifetime, then following his death, continuing successive trusts for the use and benefit of Son's descendants. Article III, paragraph 3.2 provides for the creation of a separate irrevocable trust (Granddaughter's Trust) for the use and benefit of Granddaughter during her lifetime, then following her death, continuing successive trusts for the use and benefit of Granddaughter's descendants. Article III, paragraph 3.3 provides for the creation of a separate irrevocable trust (Grandson's Trust) for the use and benefit of Grandson during his lifetime, then following his death, continuing successive trusts for the use and benefit of Grandson's descendants.

Article I, paragraph 1.4 provides, generally, that in any calendar year, each current income beneficiary shall have the power to withdraw from the corpus of his or her trust, property having a value equal to the value of the transfer to his or her trust during such year, provided that the total amount that may be withdrawn shall not exceed the lesser of: (i) the maximum amount over which an individual may have a power of withdrawal without its lapse in such year being a release of such power under § 2514(e); or (ii) the maximum amount excludable from a donor's taxable gifts for such year in respect of gifts to any donee under § 2503(b).

Article II, paragraph 2.2 provides, in part, that it is the grantors' intention to allocate to each gift made to a trustee, including the initial gift, the proper amount of generation-skipping transfer tax exemption available to the grantors so as to make the inclusion ratio zero for such trust, and for all continuing successive trusts.

Article IV, paragraph 4.1 provides, in part, that the trustee may distribute the current or accumulated income and/or corpus from a trust to or for the use and benefit of the beneficiary thereof at such time or times and in such amounts as the trustee, in the trustee's sole discretion, shall deem necessary to provide for the health, education, maintenance and support of such beneficiary in accordance with his or her accustomed manner of living.

Article IV, paragraph 4.2 provides, generally, that each beneficiary shall have a non-general inter vivos power to appoint, at any time, all or a part of the accumulated or undistributed income and/or corpus of his or her trust to Taxpayer 1's descendants, other than him or herself. Article IV, paragraph 4.3 provides, generally, that each beneficiary shall have a non-general testamentary power, exercisable alone and at any time, to appoint all or any part of the accumulated or undistributed income and/or corpus of his or her trust to Taxpayer 1's descendants. Article IV, paragraph 4.5 provides, in part, that upon the death of the beneficiary of a trust, to the extent that the above inter vivos and testamentary non-general powers of appointment are not effectually

exercised by such deceased beneficiary, all of the property then constituting such deceased beneficiary's trust shall pass and be distributed as follows: (a) if such deceased beneficiary has descendants surviving, such trust property shall be divided and partitioned into as many equal portions as such deceased beneficiary shall have children then surviving and children who are deceased but have descendants then surviving; (b) in the event such deceased beneficiary has no descendants surviving, then such trust property shall be divided and partitioned into as many equal portions as such deceased beneficiary has brothers and sisters then surviving and brothers and sisters who are deceased but have descendants then surviving.

On Date 1, Taxpayer 1 made the following transfers: (1) one-half of a A percent limited partnership interest in Partnership to Son's Trust, with a reported fair market value of \$B; (2) one-half of a C percent interest in Partnership to Granddaughter's Trust, with a reported fair market value of \$D; and (3) \$E cash to Grandson's Trust.

Taxpayer 1 relied on Accounting Firm to prepare and file her Year 1 Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax return"). Taxpayer 1's Year 1 transfers to Son's Trust, Granddaughter's Trust, and Grandson's Trust were reported on the Year 1 gift tax return, however, no allocation of Taxpayer 1's GST exemption was made.

In the process of preparing Taxpayer 1's Year 2 gift tax return, Accounting Firm realized that Taxpayer 1's GST exemption had not been allocated for transfers made by Taxpayer 1 in Year 1.

Taxpayer 1 has requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1's GST exemption with respect to the Year 1 transfers to Son's Trust, Granddaughter's Trust, and Grandson's Trust; (2) that the allocations will be effective as of the date of the transfers to the trusts; and (3) that the allocations shall be made based on the value of the property transferred to the trusts as of the date of the original transfers.

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 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)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) 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.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

Section 2642(b)(1) provides 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) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

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) or (2), and an election under § 2632(b)(3) or (c)(5). 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 under this paragraph, 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. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(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 Internal Revenue Code except subtitles E, G, H, and I.

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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) 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, Taxpayer 1 is granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer 1's available GST exemption, with respect to the transfers to Son's Trust, Granddaughter's Trust, and Grandson's Trust. The allocations will be effective as of the date of the transfers, and the gift tax values of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts. The inclusion ratio for the trusts should be determined under §§ 2642(a) and 2642(b).

These allocations should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 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. Specifically, we have not expressed an opinion as to whether the transfers to Son's Trust and Granddaughter's Trust are subject to an estate tax inclusion period under § 2642(f). In addition, we express or imply no opinion regarding the value of the property transferred to Son's Trust and Granddaughter's Trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer 1.

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,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter