

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-135685-03

Date:
June 04, 2004

Legend

Spouse =
Trust A =

Date 1 =
Taxpayer =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =
Year 11 =
Year 12 =
Trust B =

Trust C =

Trust D =

Date 2 =
Child 1 =
Child 2 =
Child 3 =
Partnership =
Attorney =

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Accounting =
 Firm
 Date 3 =
 Date 4 =

Dear Sir:

This is in response to your letter dated December 26, 2003, and prior correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) Tax exemption.

The facts and representations submitted are summarized as follows.

Trust A

Spouse established Trust A, an irrevocable trust, on Date 1 to benefit Spouse's grandchildren and other skip persons. Trust A holds insurance policies, the premiums for which are funded by Spouse through annual split gifts with Taxpayer.

Article III, paragraph 1 provides that while either Taxpayer or Spouse is living the trustee may pay to any one or more of Spouse's descendants so much of the net income as the trustee from time to time considers advisable for the beneficiary's support, health, education and welfare, taking into account their respective incomes known to the trustee, adding any unpaid net income to principal. Payments shall not be advancements.

In Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6 Spouse transferred cash to Trust A. Taxpayer and Spouse reported each transfer on a Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) ("gift tax return") and elected to split each gift under § 2513. Taxpayer made late or timely allocations of GST exemption for each transfer.

In Year 7, Year 8, Year 9, Year 10, Year 11 and Year 12 Spouse made transfers of cash to Trust A. For each year, Spouse and Taxpayer elected to split gifts under § 2513. Taxpayer filed a gift tax return for each year reporting the transfers to Trust A. Beginning in Year 7 and continuing through Year 12, Taxpayer allocated any remaining GST exemption to each transfer when possible, but did not have sufficient remaining exemption amounts to allocate exemption to the full value of the transfers. Taxpayer's Year 7 and Year 10 gift tax returns included the following statement with respect to the allocation of GST exemption to the transfers to Trust A:

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Donor allocates to this trust the smallest amount of the Donor's GST exemption necessary to produce an inclusion ratio (as defined in Internal Revenue Code Section 2642(a)) which is closest to or, if possible, equal to zero. This is a formula election which will change if values are changed on audit.

Trust B, Trust C, and Trust D

Spouse created irrevocable trusts (Trust B, Trust C, and Trust D) for the benefit of each of his three children and their descendants on Date 2. Spouse's children are Child 1, Child 2, and Child 3. Trust B, Trust C, and Trust D have similar provisions and differ only in the name of the primary beneficiary of each trust. The primary beneficiary of Trust B is Child 1. The primary beneficiary of Trust C is Child 2. The primary beneficiary of Trust D is Child 3.

Article IV of each trust provides that the trustee may pay to any one or more of the primary beneficiary and the descendants of the primary beneficiary so much or all of the net income and principal as the trustee from time to time considers advisable for the beneficiary's support, health, education, and welfare, taking into account their respective incomes known to the trustee, adding any unpaid net income to principal. Payments shall not be advancements.

On Date 2 in Year 5, Spouse gifted limited partnership interests in Partnership to Trust B, Trust C, and Trust D for the benefit of Child 1, Child 2, and Child 3, respectively. After the transfer, Trust B, Trust C, and Trust D each owned a 31 percent limited partnership interest in Partnership. Spouse retained a 1.5 percent limited partnership interest and a 1 percent general partnership interest in Partnership. Taxpayer and Spouse each filed gift tax returns, for Year 5 and elected to split the Year 5 gifts to Trust B, Trust C, and Trust D under § 2513. A letter written by Attorney, Taxpayer's estate planner, in Year 5 advised Accounting Firm to allocate GST exemption to the trusts. Accounting Firm prepared the returns but did not allocate Taxpayer's GST exemption to the gifts. An appraisal with respect to the valuation of the limited partnership interests in Partnership was attached to both returns. No other transfers have been made to Trust B, Trust C, or Trust D. There have been no taxable terminations of or distributions from Trust B, Trust C, or Trust D as defined in § 2612.

Accounting Firm discovered that Taxpayer's GST exemption was not allocated to the transfers to the trusts. Accounting Firm and Attorney advised Taxpayer to make late allocations. Under the direction of Taxpayer, Attorney prepared amended gift tax returns for Year 6 allocating GST exemption to Trust B, Trust C, and Trust D. The amended returns were filed on Date 3. Accounting Firm subsequently discovered an error in the valuation of Partnership reported in the Year 5 gift tax returns. Accounting

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Firm prepared amended gift tax returns to correct the valuation errors. The amended gift tax returns were filed on or about Date 4.

Rulings Requested

Taxpayer has requested the following rulings: (1) An extension of time to make an allocation of his GST exemption to his portion of the gifts made on Date 2 to Trust B, Trust C, and Trust D. (2) The late allocations made by Taxpayer on Date 3 with respect to the Date 2 transfers to Trust B, Trust C, and Trust D are void. (3) Pursuant to the formula allocation of GST exemption on Taxpayer's Year 7 gift tax return, the smallest amount of Taxpayer's available GST exemption necessary to produce an inclusion ratio that is closest to or equal to zero will be allocated to Taxpayer's portion of the Year 7 transfer to Trust A. (4) An extension of time to make an allocation of Taxpayer's GST exemption to his portion of the Year 8 and Year 9 transfers to Trust A. (5) Pursuant to the formula allocation of GST exemption on Taxpayer's Year 10 gift tax return, the smallest amount of Taxpayer's available GST exemption necessary to produce an inclusion ratio that is closest to or equal to zero will be allocated to Taxpayer's portion of the Year 10 transfer to Trust A.

Section 2513(a)(1) of the Internal Revenue Code provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 25.2513-2(a)(1)(ii) of the Gift Tax Regulations provides that consent to the application of the provisions of § 2513 with respect to a "calendar period" shall, in order to be effective be signified by both spouses. If both spouses file gift tax returns within the time for signifying consent, it is sufficient if the consent of each spouse is signified on his own return.

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

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.

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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) of the Generation-Skipping Transfer Tax Regulations provides in relevant part that, except as provided in § 26.2642-3 (relating to charitable lead annuity trusts), 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) - (A) 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, on and after the close of such estate tax inclusion period, and (B) 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 this paragraph.

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

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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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 is granted an extension of time of 60 days from the date of this letter to file a supplemental Form 709 with a notice of allocation allocating GST exemption to the transfers made to Trust B, Trust C, and Trust D on Date 2. In addition, Taxpayer is granted an extension of time of 60 days from the date of this letter to file supplemental Forms 709 with notices of allocation allocating GST exemption to the transfers made to Trust A in Year 8 and Year 9. Each allocation will be effective as of the date of the transfer, and the gift tax value of each transfer will be used in determining the amount of the GST exemption allocated to each Trust. The inclusion ratio for the trusts should be determined under §§ 2642(a) and 2642(b). The late allocations filed on Date 3 with respect to Trust B, Trust C, and Trust D in excess of the amount necessary to obtain an inclusion ratio of zero with respect to the trust will be void under § 26.2632-1(b)(2). Furthermore, pursuant to the formula allocations of GST exemption on Taxpayer's Year 7 and Year

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10 gift tax returns, the smallest amount of Taxpayer's available GST exemption necessary to produce an inclusion ratio that is closest to or equal to zero will be allocated to Taxpayer's portion of the Year 7 and Year 10 transfers to Trust A. A copy of this letter should be attached to each supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we are expressing no opinion as to whether the transfers to Trust B, Trust C, and Trust D are subject to an estate tax inclusion period under § 2642(f). In addition, we have specifically not ruled on the value of the transfers to Trust B, Trust C, and Trust D.

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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your attorney.

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

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

Enclosures

Copy of this Letter
Copy for § 6110 purposes