

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-166950-02

Date:

March 3, 2003

In Re:

LEGEND:

- Trust 1 =
- Trust 2 =
- Taxpayer 1 =
- Taxpayer 2 =
- Taxpayers =
- Date 1 =
- Date 2 =
- X =
- Company =

Dear :

This is in response to your letter dated November 7, 2002, requesting, on behalf of Taxpayers, 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 transfers made to trusts.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayer 1 formed Trust 1 and Trust 2 (collectively, Trusts), one for the benefit of each of Taxpayer 1 and Taxpayer 2's two children and their descendants. The terms of the Trusts are identical except for the beneficiary.

Article 3.1.1 provides that the child for whom the trust was created (beneficiary) is to receive the Trust's entire net income at least annually for the beneficiary's lifetime.

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Article 3.1.2 provides that the trustee may pay trust principal to the beneficiary to provide for the beneficiary's care, support, and maintenance. In the event that Taxpayer 1 dies before the beneficiary attains age 25, payments of Trust principal shall not exceed the aggregate of one-half of the value of the Trust at Taxpayer 1's death until the beneficiary attains age 25.

Article 3.2.1 provides that, upon the beneficiary's death, any earned but undistributed trust income shall be paid to the beneficiary's estate. Article 3.2.2 provides that the remaining trust estate is to be divided into one equal share for each then living child of the beneficiary and one share for any deceased child leaving then living issue of the beneficiary and distributed, by right of representation, free of trust; provided, however, that if the trustee holds a separate trust for the benefit of a recipient of these assets, these assets are to be added to that trust.

On Date 2, Taxpayer 1 transferred X shares of stock in Company and two life insurance policies to each Trust. Taxpayer 1 and Taxpayer 2 each consented to have the Date 2 transfers treated as made one-half by each, pursuant to § 2513. Taxpayer 1 and Taxpayer 2 retained an accounting firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting the transfers. The accounting firm inadvertently failed to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to the Date 2 transfers to the Trusts.

Taxpayers have represented that they have not allocated any of their respective available GST exemption to other transfers.

Taxpayer 1 and Taxpayer 2 have requested an extension of time under §§ 2642(g)(1) and 301.9100-3 to make late GST exemption allocations to the Date 2 transfers to the Trusts and that such allocations will be based on the value of the property transferred to the Trusts on 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 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.

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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.

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) 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, its value at the time of the close of the 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 § 2642(g)(1).

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. 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.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

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

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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.

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, Taxpayer 1 and Taxpayer 2 are granted an extension of time of sixty (60) days from the date of this letter to make allocations of their GST exemption to the Date 2 transfers to the Trusts. The allocations will be effective as of Date 2, and the gift tax value of the transfers to the Trusts will be used in determining the amount of GST exemption to be allocated to the Trusts. Taxpayer 1's and Taxpayer 2's allocation of their respective GST exemptions should be made on Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Form 709. Two copies are enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement

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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 transferred to the Trusts or whether the property transferred is eligible for the gift tax annual exclusion under § 2503(b).

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.

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

Sincerely,

Heather C. Maloy

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

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

cc: