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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-116095-04

Date:

May 06, 2005

In Re:

Legend

Taxpayer =

1

Taxpayer =

2

Date 1 =

Trust 1 =

Child =

Trust 2 =

Year 1 =

A =

B =

Year 2 =

C =

D =

Year 3 =

Year 4 =

E =

Year 5 =

F =

G =

Year 6 =

H =

I =

Year 7 =

J =

Year 8 =

K =

Year 9 =

Year 10 =

L =  
Year 11 =  
M =  
N =  
Year 12 =  
O =  
P =  
a =  
b =  
c =  
d =  
e =  
f =  
g =  
h =  
i =  
j =  
k =  
l =

Dear :

This is in response to your letter dated March 5, 2004, and subsequent correspondence, on behalf of Taxpayer 1 and Taxpayer 2, 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 Trust 1, an irrevocable trust with GST potential. Also on Date 1, Taxpayer 2 established Trust 2, an irrevocable trust with GST potential. In Year 1, Taxpayer 1 transferred property worth \$A to Trust 1 and Taxpayer 2 transferred property worth \$B to Trust 2. In Year 2, Taxpayer 1 transferred property worth \$C to Trust 1 and Taxpayer 2 transferred property worth \$D to Trust 2. In Year 3, Taxpayer 1 transferred property worth \$C to Trust 1 and Taxpayer 2 transferred property worth \$D to Trust 2. In Year 4, Taxpayer 2 transferred \$E to Trust 2. In Year 5, Taxpayer 1 transferred property worth \$F to Trust 1 and Taxpayer 2 transferred property worth \$G to Trust 2. In Year 6, Taxpayer 1 transferred property worth \$H to Trust 1 and Taxpayer 2 transferred property worth \$I to Trust 2. In Year 7, Taxpayer 1 transferred property worth \$H to Trust 1 and Taxpayer 2 transferred property worth \$J to Trust 2. In Year 8, Taxpayer 1 transferred property worth \$H to Trust 1 and Taxpayer 2 transferred property worth \$K to Trust 2. In Year 9, Taxpayer 1 transferred property worth \$H to Trust 1 and Taxpayer 2 transferred property worth \$K to Trust 2. In Year 10, Taxpayer 1 transferred property worth \$L to Trust 1. In Year 11, Taxpayer 1 transferred property worth \$M to Trust 1 and Taxpayer 2 transferred property worth \$N

to Trust 2. In Year 12, Taxpayer 1 transferred property worth \$O to Trust 1 and Taxpayer 2 transferred property worth \$P to Trust 2.

Taxpayer 1 and Taxpayer 2 relied on their long-time accountant to prepare and file Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return (“gift tax returns”) for Year 1 through Year 10. On each of the gift tax returns filed, Taxpayer 1 and Taxpayer 2 each elected under § 2513 to treat the gifts made by them to third parties during the respective calendar year as made one-half by each of them. Taxpayer 1’s and Taxpayer 2’s transfers to Trust 1 and Trust 2 were reported on the gift tax returns, however, the accountant did not properly allocate any of their respective GST exemptions to the transfers made to Trust 1 and Trust 2. In Year 11, Taxpayer 1 and Taxpayer 2 retained the services of an attorney to prepare and file their Year 11 gift tax returns. Upon review of Taxpayer 1’s and Taxpayer 2’s gift tax returns filed for prior years, the attorney discovered that the prior returns failed to make proper allocations of the taxpayers’ respective GST exemptions.

Taxpayer 1 and Taxpayer 2 have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of their respective GST exemptions with respect to the transfers made in Years 1 through Year 12 to Trust 1 and Trust 2.

Section 2601 imposes a tax on every 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), in effect at the time of the transfer, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2513(a)(1) provides, generally, that a gift made by one spouse to any person other than his spouse shall, for the purposes of chapter 12, 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 25.2513-1(b)(4) of the Gift Tax Regulations provides, in part, that if one spouse transferred property in part to his spouse and in part to third parties, the consent is effective with respect to the interest transferred to third parties only insofar as such interest is ascertainable at the time of the gift and hence severable from the interest transferred to his spouse.

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 chapter 13.

Section 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provides, in part, that in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

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) 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 and Taxpayer 2 are each granted an extension of time of 60 days from the date of this letter to make allocations of their respective available GST exemptions, with respect to the transfers made in Year 1 through Year 10 to Trust 1 and Trust 2 as follows: (1) \$a to the Year 1 transfer to Trust 1 and \$b to the Year 1 transfer to Trust 2; (2) \$c to the Year 2 transfer to Trust 1 and \$d to the Year 2 transfer to Trust 2; (3) \$c to the Year 3 transfer to Trust 1 and \$d to the Year 3 transfer to Trust 2; (4) \$e to the Year 4 transfer to Trust 2; (5) \$f to the Year 5 transfer to Trust 1 and \$g to the Year 5 transfer to

Trust 2; (6) \$h to the Year 6 transfer to Trust 1 and \$i to the Year 6 transfer to Trust 2; (7) \$h to the Year 7 transfer to Trust 1 and \$j to the Year 7 transfer to Trust 2; (8) \$h to the Year 8 transfer to Trust 1 and \$k to the Year 8 transfer to Trust 2; (9) \$h to the Year 9 transfer to Trust 1 and \$k to the Year 9 transfer to Trust 2; and (10) \$l to the Year 10 transfer to Trust 1.

The allocations will be effective as of the date of the respective transfers to the trusts, and the gift tax value of the transfers to Trust 1 and Trust 2 will be used in determining the amount of GST exemption to be allocated to Trust 1 and Trust 2. These allocations described above should be made on supplemental Forms 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 Forms 709. A copy is enclosed for this purpose.

No extension of time is granted with respect to the Year 11 and Year 12 transfers to Trust 1 and Trust 2 because Taxpayer 1's and Taxpayer 2's respective GST exemptions have already been allocated to those transfers pursuant to the automatic allocation rules set forth in § 2632(c)(1).

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. In addition, we express or imply no opinion regarding the value of the property transferred to Trust 1 and Trust 2.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer 1 and Taxpayer 2.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of letter