

Internal Revenue Service

Department of the Treasury

Number: **200311013**
Release Date: 3/14/2003
Index Numbers: 2642.00-00
9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-137303-02
Date:
December 3, 2002

Re:

LEGEND:

Taxpayer 1 =

Taxpayer 2 =

Date 1 =

Trust A =

Trust B =

Daughter A =

Daughter B =

Date 2 =

X =

A =

Corporation =

Y =

B =

Year 1 =

Date 3 =

PLR-137303-02

Dear _____ :

This is in response to a letter dated June 19, 2002, on behalf of Taxpayer 1 and the estate of Taxpayer 2, and subsequent correspondence requesting an extension of time under § 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 2 established Trust A, an irrevocable trust, for the benefit of Daughter A and her descendants and Trust B, an irrevocable trust, for the benefit of Daughter B and her descendants.

Article Fourth of Trust A provides that Daughter A is the initial beneficiary of Trust A. Article Fifth, paragraph A. of Trust A provides that during Daughter A's lifetime, the trustee shall at any time pay or apply so much of the principal or so much of the net income of Trust A as is required for the health, education, maintenance, and support of Daughter A.

Article Fifth, paragraph B.(1) of Trust A provides that upon the death of Daughter A, the trustee shall hold, administer or distribute the then remaining principal and undistributed income of the trust to or for the benefit of such persons, corporations, or organizations, whether outright or in trust, and upon such terms and conditions as Daughter A shall appoint by a will duly admitted to probate and specifically referring to and exercising this power of appointment. However, Daughter A may not appoint to or for the benefit of herself, her creditors, her estate, or the creditors of her estate. To the extent that Daughter A does not exercise this exclusive special power to appoint by will, then upon the death of Daughter A, the trustee shall divide Trust A into as many equal shares as there are children of Daughter A then living and children of Daughter A then deceased but leaving issue then living. Each share of each trust shall constitute and be held, administered, and distributed by the trustee as a separate trust.

Article Fifth, paragraph B.(1)(c) of Trust A provides that if there are no issue of Daughter A then living, the trust estate shall be distributed one-half ($\frac{1}{2}$) to the persons who would be the heirs of Taxpayer 2, and the other one-half ($\frac{1}{2}$) to the persons who would be the heirs of Taxpayer 1, and if either Taxpayer 2 or Taxpayer 1 have no heirs, then all to the heirs of the other.

The terms of Trust B are identical to Trust A, except that the primary beneficiaries of Trust B are Daughter B and her descendants.

On Date 2, Taxpayer 1 and Taxpayer 2 funded Trust A with x shares of Corporation common stock, with a total reported value of \$A, and funded Trust B with y shares of Corporation common stock, with a total reported value of \$B. Taxpayer 1 and Taxpayer 2 each reported the transfers to Trust A and Trust B on timely filed Year 1

PLR-137303-02

Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer 1 and Taxpayer 2 each consented to have the gifts made by them to third parties during the calendar year as made one-half by each of them. Taxpayer 1 and Taxpayer 2 relied on an accountant to prepare their Year 1 gift tax returns. The accountant incorrectly reported the Year 1 transfers to Trust A and Trust B and did not effectively allocate Taxpayer 1's and Taxpayer 2's respective GST exemptions to Trust A and Trust B.

Taxpayer 2 died on Date 3. No additional transfers have been made to Trust A or Trust B.

Taxpayer 1 and the estate of Taxpayer 2 have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1's and Taxpayer 2's GST exemptions for the transfers to Trust A and Trust B in Year 1; and (2) as a result of such allocations, Trust A and Trust B will each have an inclusion ratio of zero.

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)) 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 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

PLR-137303-02

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. 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, 2001-34 I.R.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.

PLR-137303-02

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 the estate of Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer 1's and Taxpayer 2's available GST exemptions, with respect to the transfers to Trust A and Trust B in Year 1. The allocations will be effective as of Date 2, the date of the transfers to the trusts, 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 Trust A and Trust B. Provided the amount of GST exemption allocated to Trust A and Trust B is equal to the value of the property transferred to Trust A and Trust B for federal gift tax purposes, Trust A and Trust B will each have an inclusion ratio of zero.

The allocations 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.

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 A and Trust B.

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

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 section 6110 purposes
Copy of this letter