

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-133137-02
Date:
April 16, 2003

In Re:

LEGEND:

- Taxpayer =
- Spouse =
- Trust =
- Settlors =
- Date 1 =
- Date 2 =
- Date 3 =
- Year 1 =
- a =
- b =
- Accounting Firm =
- Personal Advisor =
- Bookkeeper =

Dear :

This is in response to your letter received June 12, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate Taxpayer's generation-skipping transfer (GST) tax exemption to a transfer to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayer and Spouse (Settlors) formed the Trust for the benefit of their family members and their descendants.

Article III.3.1 of Trust provides that the trustee will initially hold the trust estate in a single common trust. Article III.3.1.A provides that during the common trust's term trustee has the discretion to distribute trust net income to Settlors' children and grandchildren and Taxpayer's mother, father, and brother to provide for their health, support, maintenance, and education. If the trustee deems that the common trust's

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income is insufficient, the trustee has the discretion to pay trust principal to Settlers' children or grandchildren for their health, support, maintenance, and education. Distributions need not be equal among the beneficiaries. Undistributed income is to be added to principal.

Article III.3.1.C provides that the common trust will terminate on the third anniversary of the death of the last of the Settlers to die. Upon termination, the trustee is to divide the remaining trust estate into equal shares and allocate one share to each then living child and one collective share to each deceased child's then living descendants. Trustee is to hold each living child's share in further trust under Article III.3.2. Trustee is to divide the collective share allocated to each deceased child's then living descendants into equal shares and allocate one share to each deceased child's then living children (Settlers' grandchildren) and one collective share to each deceased grandchild's then living descendants (Settlers' great-grandchildren). Trustee is to hold each living grandchild's share in further trust under Article III.3.3. Each then living great-grandchildren's collective share is to be further divided and allocated one share to each great-grandchild and held in further trust under Article III.3.3.

In the event that Settlers are not survived by then living descendants when the common trust terminates, the trustee is to distribute the trust estate to Taxpayer's father, brother, and mother, if living, if not, then to charities designated in the Trust.

Pursuant to Articles III.3.2.A and B, the trustee of a trust established under Article III.3.1.C for a child is to pay the child and his or her descendants so much of trust's net income and principal deemed necessary to provide for the child's and his or her descendants health, support, maintenance, and education. Income not distributed is to be added to principal, pursuant to Article III.3.2.C. Article III.3.2.E provides the child with a testamentary limited power to appoint the trust's remaining trust estate in his or her will or codicil among Settlers' descendants.

Article III.3.2.F provides that when a child dies his or her trust terminates. If the child is survived by then living descendants, the trustee is to divide the remaining unappointed trust estate into equal shares and allocate one share to the child's then living children (Settlers' grandchildren) and one collective share to each deceased grandchild's then living descendants (Settlers' great-grandchildren). Trustee is to hold each living grandchild's share in further trust under Article III.3.3. The collective share for a deceased grandchild's living descendants is to be divided and one share is to be allocated to each great-grandchild and held in further trust in accordance with Article III.3.3.

Taxpayer has represented that he relied upon Accounting Firm to prepare all of his individual tax returns. Taxpayer also relied on Personal Advisor and his personal bookkeeper (Bookkeeper) to provide Accounting Firm with the necessary information in order for Accounting Firm to prepare Taxpayer's individual tax returns. Personal Advisor is a Certified Public Accountant with over 35 years of experience, 25 of which are in the area of taxation.

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On Date 2, Taxpayer made a gift of \$a to the Trust. In the same year (Year 1), Taxpayer made a gift of \$b to the Trust on Date 3. Settlers retained Accounting Firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Year 1. On their Forms 709, Settlers consented to treat the gifts made in Year 1 as being made one-half by each pursuant to § 2513. Through an oversight, Settlers' tax professionals failed to include the Date 2 gift of \$a to the Trust on Settlers' Forms 709 and, as a result, failed to allocate Settlers' GST exemptions thereto.

Taxpayer is requesting an extension of time under §§ 2642(g)(1) and 301.9100-3 to make a GST exemption allocation to the Date 2 transfer to the Trust and that such allocation will be based on the value of the property transferred to the Trust 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.

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) provided 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.

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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 the 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 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.

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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 sixty (60) days from the date of this letter to make an allocation of Taxpayer's available GST exemption to the transfer to the Trust on Date 2. The allocation should be made on a supplemental Form 709 for Year 1 that includes Taxpayer's Date 2 gift of \$a to the Trust. The allocation will be effective as of Date 2, and the gift tax value of the transfer to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust. The supplemental Form 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. One copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by Settlers 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 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 Trust for federal transfer tax purposes.

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 § 6110 purposes
One copy of this letter

cc: