

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-169432-02
Date:
April 11, 2003

Re:

LEGEND:

Taxpayer 1 =

Taxpayer 2 =

Trust =

Company =

Partnership =

Accounting Firm =

Law Firm =

Attorney =

Son 1 =

Son 2 =

Son 3 =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

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Year 6 =
 Year 7 =
 Year 8 =
x =
\$a =
\$b =
\$c =
\$d =
\$e =
\$f =

Dear :

This is in response to your authorized representative's letter, dated December 20, 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 make allocations of Taxpayer 1's and Taxpayer 2's generation-skipping transfer (GST) tax exemptions.

The facts and representations submitted are summarized as follows:

Accounting Firm has provided income tax and estate planning services for Taxpayer 1 and Taxpayer 2 since Year 1. Law Firm has provided legal services, including estate planning services, to Taxpayer 1 and Taxpayer 2 since Year 2.

On Date 1, Taxpayer 1 and Taxpayer 2 established Trust, an irrevocable trust to benefit their descendants. Article Two of the Trust provides that the Trust corpus shall be divided into three equal shares, one share for the benefit of Son 1, one share for the benefit of Son 2, and one share for the benefit of Son 3.

Article Three, Section 3.1 provides that during Son 1's life, all income shall be distributed annually to Son 1. At Son 1's death, the income shall be distributed to Son 1's wife until she becomes deceased or remarries. Son 1's trust shall terminate upon the earliest of (a) the date when both Son 1 is deceased and Son 1's wife is either deceased or has remarried or (b) the date all of the shares of Company held by Son 1's trust are sold and Son 1 is living at the time of the sale. Upon the termination of Son 1's trust, all properties remaining in Son 1's trust shall be distributed as follows: (1) If Son 1 is living at the time of termination, all properties shall be distributed to Son 1, (2) If Son 1 is not living at the time of termination, all properties remaining shall be distributed one-half to Son 2's trust and one-half to Son 3's trust; provided, if at the time

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of the distribution, Son 2 is deceased, all of the distribution shall be made to Son 3's trust.

Article 3, Section 3.2 provides that during Son 2's life, all income shall be distributed to Son 2 annually. Son 2's trust shall terminate upon the earliest of (a) the date when Son 2 is deceased or (b) the date all of the shares of Company held by the trustees of Son 2's trust are sold and Son 2 is living at the time of the sale. Upon the termination of Son 2's trust, all properties remaining in Son 2's trust shall be distributed as follows: (1) If Son 2 is living at the time of termination, all properties shall be distributed to Son 2, (2) If Son 2 is not living at the time of termination, all properties remaining shall be distributed one-half to Son 1's trust and one-half to Son 3's trust; provided, if at the time of the distribution, Son 1 is deceased, all of the distribution shall be made to Son 3's trust.

Article 3, Section 3.3 provides that during Son 3's life, all income shall be distributed to Son 3 annually. At Son 3's death, the income shall be distributed to Son 3's wife until she becomes deceased or remarries. If Son 3's trust continues after Son 3 is deceased and Son 3's wife is either deceased or remarries, the trustees shall thereafter distribute all income received equally to Son 3's two children, or the survivor thereof. Son 3's trust shall terminate upon the earliest of (a) the date when all of the shares of Company held in Son 3's trust have been sold, Son 3 is deceased, Son 3's wife is either deceased or has remarried, and their children are 30 years or more, or (b) the date all of the shares of Company held in Son 3's trust are sold and Son 3 is living at the time of the sale. Upon the termination of Son 3's trust, all properties remaining in Son 3's trust shall be distributed as follows: (1) If Son 3 is living at the time of termination, all properties shall be distributed to Son 3, (2) If Son 3 is not living at the time of termination, and Son 3's wife is either deceased or has remarried, all properties remaining shall be distributed equally to Son 3's two children, or the survivor thereof.

Article Three, Section 3.5 provides that if both of Son 3's children become deceased prior to the date that one or both of them would have received a distribution of corpus from one or more of the three trusts, the share of corpus which would have been distributed to one or both of them shall be distributed: (a) if either or both of Son 3's children leaves a child or children surviving him or her at the time of distribution, the distribution shall be made to those surviving children, share and share alike, (b) if neither of Son 3's children leave children, the distribution shall be made as follows: (i) one-half to Son 1 if he is surviving at the time of distribution and one-half to Son 2 if he is surviving at the time of distribution, or all to the survivor thereof, (ii) if neither Son 1 or Son 2 are living at the time of the distribution, one-half to the then living heirs-at-law of Taxpayer 1 and one-half to the then living heirs-at-law of Taxpayer 2.

Taxpayer 1 and Taxpayer 2 each contributed x shares of Company to Trust in Year 3. The value reported for each of the gifts of x shares was \$a. Taxpayer 1 and Taxpayer 2 each timely filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the Year 3 gifts. The Year 3 gift tax returns were prepared by Attorney, a member of Law Firm. On each of the gift tax returns, Law Firm

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inadvertently failed to allocate, or to advise Taxpayer 1 and Taxpayer 2 to allocate, a portion of their GST tax exemptions to the gifts to Trust.

In Year 4, Taxpayer 1 and Taxpayer 2 each made gifts to Trust of Partnership units with a reported value of \$b. In Year 5, Taxpayer 1 and Taxpayer 2 each made gifts to Trust of Partnership units with a reported value of \$c. In Year 6, Taxpayer 1 and Taxpayer 2 each made gifts to Trust of Partnership units with a reported value of \$d. In Year 7, Taxpayer 1 and Taxpayer 2 each made gifts to Trust of Partnership units with a reported value of \$e. In Year 8, Taxpayer 1 and Taxpayer 2 each made gifts to Trust of Partnership units with a reported value of \$f.

Taxpayer 1 and Taxpayer 2 each timely filed Forms 709, reporting the Year 4, Year 5, Year 6, Year 7 and Year 8 gifts. All of the Forms 709 prepared for Taxpayer 1 and Taxpayer 2 for Year 4, Year 5, Year 6, Year 7 and Year 8 were prepared by Accounting Firm. In preparing the gift tax returns for Year 4 through Year 8, Accounting Firm inadvertently failed to allocate, or to advise Taxpayer 1 and Taxpayer 2 to allocate, a portion of their GST tax exemptions to the gifts to Trust.

Law Firm recently discovered the failure to allocate a portion of Taxpayer 1's and Taxpayer 2's GST tax exemptions on the Forms 709.

Taxpayers 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 tax exemptions for the transfers to Trust in Year 3, Year 4, Year 5, Year 6, Year 7 and Year 8, and (2) that such allocations shall be based on the value of the property transferred to Trust as of the date of the original transfers.

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

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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, 2001-34 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

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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 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 tax exemptions, with respect to Taxpayer 1's and Taxpayer 2's transfers to Trust in Year 3, Year 4, Year 5, Year 6, Year 7 and Year 8. The allocations will be effective as of the date of the transfers to Trust, and the value of the transferred property for purposes of determining the inclusion ratio of each GST Trust will be the gift tax value of the transferred property.

The allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709. Two copies are 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 the trusts.

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

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
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter