

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4/PLR-123186-03  
Date: JUNE 09, 2003

Re:

Legend:

Trust	=
Settlor	=
Wife	=
State	=
Company	=
Trustee	=
County	=
B	=
Daughter	=
Son	=
Grandchild 1	=
Grandchild 2	=
Date 1	=
Date 2	=
Date3	=
Date 4	=
Years 1 through 7	=
Year 8	=

\$w =  
\$x =  
\$y =  
\$z =  
 State Statute =

Dear \_\_\_\_\_,

This is in response to your March 28, 2003, submission in which an extension of time was requested under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate Settlor's and Wife's remaining GST exemption to transfers to B Irrevocable Trust - Grandchildren, a life insurance trust.

According to the facts submitted, on Date 1, Settlor established Trust, an irrevocable trust, for the benefit of Son, Daughter, Grandchild 1, and Grandchild 2. Trustee has been the trustee of Trust since Year 8. Trust owned a paid-up second-to-die life insurance policy with Company on the lives of Settlor and Wife. Wife died on Date 2. Settlor is the executor of Wife's estate.

Article I of Trust provides that Settlor has transferred to Trustee certain life insurance policies. The proceeds of the policies are payable to Trustee.

Under Article III, Settlor renounces all interest, either vested or contingent, including reversionary interests or possibilities of reverter which Settlor might have in the income and/or corpus of Trust. Settlor shall have no interest or rights to any insurance that Trustee may purchase on the life of Settlor.

Article VI provides that during Settlor's lifetime, Trustee is to hold, manage, administer, invest and reinvest the principal and accumulated net income of Trust, and to collect the income therefrom. Under Article VII, Trustee is under no obligation during the lifetime of Settlor to pay any premiums, assessments or other charges necessary to keep any life insurance policies in force.

Article VIII provides that prior to Settlor's death, Trustee is to notify, within seven days or receipt, Son, Daughter, Grandchild 1 and Grandchild 2 of any property transferred to Trust. Each named beneficiary shall then have the unrestricted right for a period of 45 days from the date of notification to demand a share of the property transferred equal to the lesser of \$20,000 or an amount determined by dividing the number of named beneficiaries then living by the total value of the property transferred.

Under Article X, upon the death of Settlor and Wife, Trustee is to collect all life insurance proceeds payable to Trustee. Thereupon, under Article XI(a), Trustee is to divide Trust into equal shares so as to provide one share for each of Son, Daughter,

Grandchild 1, and Grandchild 2. All the net income from each share is to be paid in convenient installments to, or applied for the benefit of such named beneficiary. In addition to income, principal may be distributed to the named beneficiary or to his or her dependents residing with him or her for medical care, education, support and maintenance in reasonable comfort, taking into consideration any other income or resources of the beneficiary.

Article XI(2) provides that after the division of Trust into shares, Trustee is to distribute one-half of the principal of Daughter's share to her with the balance of the share distributed to her on the fifth anniversary of the date of the division into shares.

Article XI(3) provides that Trustee is to hold the share of Son during Son's lifetime making payments pursuant to Article XI(1). In the year when Trust is divided into shares Son is to be paid during his lifetime from the principal of his share upon his written request an amount not to exceed \$5,000 or 5% of the aggregate value of his share, whichever is greater, on the last day of the applicable fiscal year. The right of withdrawal is noncumulative and lapses each year to the extent not exercised.

Under Article XI(4), after the division of Trust into shares, Trustee is to distribute to Grandchild 1 and Grandchild 2, one-fourth of the principal of each grandchild's share as then constituted upon each respective grandchild attaining age 25; followed by one-third of the principal upon each grandchild attaining age 30, one-half upon attaining 35, and the balance upon attaining age 40.

In Years 1 through 7, Settlor made contributions to Trust in the amount of the insurance premium equal to \$x each year. It is represented that these transfers were intended, pursuant to section 2513, to be treated as made one-half by Settlor and one-half by Wife for gift tax purposes. It is represented that the aggregate amount of annual exclusion under § 2503(b) allowable Settlor each year with respect to gifts to Trust, taking into account gift-splitting under section 2513 was \$y, and that \$y exceeded \$x. However, it is represented that Settlor was not advised by the attorney who prepared the Trust instrument or by Settlor's accountant of the necessity of filing a federal gift tax return (Form 709) in Years 1 through 7, to allocate Generation-Skipping Transfer (GST) tax exemption or to signify gift splitting treatment under § 2513. Accordingly, neither Settlor nor Wife filed gift tax returns for Years 1 through 7.

Wife died on Date 2. Settlor is the executor of Wife's estate. Settlor retained Attorney to advise Settlor regarding probate of Wife's estate. After reviewing Trust, and the related documents in preparation of Wife's estate tax return, Attorney notified Settlor that no gift tax returns had been filed and no GST exemption had been allocated to Trust in Years 1 through 7.

On Date 3, Settlor petitioned County Probate Court requesting authorization to sever Trust, pursuant to State law, into two separate trusts; a GST-Exempt Grandchildren's Trust and a GST Non-Exempt Children's Trust.

On Date 4, County Probate Court issued its Order pursuant to State Statute, that Trustee is to divide Trust into two equal trusts, each severed trust to be funded with 50% of the value of Trust. One trust, to be exempt from GST taxes, is to be designated as the B Irrevocable Trust-Grandchildren. The other trust, to be subject to the GST tax, is to be designated as the B Irrevocable Trust - Children. Settlor and Wife's executor propose to allocate sufficient GST exemption to B Irrevocable Trust - Grandchildren in order to produce a zero inclusion ratio with respect to that trust.

It is represented that the severance of Trust did not alter any of the substantive provisions of Trust.

After the severance, the Company policy held by Trust was split by Company and reissued in the form of two separate policies, each having a face value of \$w, one held by the B Irrevocable Trust - Grandchildren and one held by the B Irrevocable Trust - Children. The two policies have equal face values, equal cash surrender values, and equal annual premiums. B Irrevocable Trust - Grandchildren is the beneficiary of one policy and the B Irrevocable Trust - Children is the beneficiary of the other policy.

Attorney, on behalf of Settlor, requests an extension of time under § 301.9100-3 to allocate \$z of Settlor's and \$z of Wife's remaining GST exemption under § 2642(b)(1), to each transfer that, as a result of the severance, is deemed to have been made to B Irrevocable Trust - Grandchildren in the Years 1 through 7. Attorney requests that such allocations are to be made based on the federal gift tax value of the property transferred to Trust as of the date of the respective transfers.

Section 2501(a) imposes a tax on the transfer of property by gift during each calendar year by any individual.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the donor's spouse is considered for purposes of the gift tax as made one-half by the donor and one-half by the donor's spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(2) provides that the gift is treated as made one-half by each spouse only if both spouses have signified (under the regulations provided for in subsection (b)), their consent to the application of § 2513(a)(1) in the case of all gifts made during the calendar year by either while married to each other.

Section 2513(b)(2)(A) provides that the consent under § 2513(a)(2) may be signified at any time after the close of the calendar year in which the gift was made. The consent may not be signified after the 15<sup>th</sup> of April following the close of such year, unless before the 15<sup>th</sup> day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filled by either spouse. Thus, if a late return is filed, the consent must be made on the first return filed for such year.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer (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 GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction”. The applicable fraction, as defined in section 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the 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 the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 26.2632-1(b)(2)(i) 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.

Section 26.2632-1(d)(1) provides that the executor may allocate GST exemption with respect to a lifetime transfer by a decedent of property that is not included in the transferor's gross estate on a Form 709.

Section 2642(a)(3)(A) provides, generally, that if a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for generation-skipping transfer tax purposes.

Section 2642(a)(3)(B)(i) provides, generally, that for purposes of § 2642(a)(3)(A), the term “qualified severance” means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if the single trust was divided on a fractional basis, and the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

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 individual's spouse, then such gift shall be so treated for GST tax purposes.

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)).

Section 2642(g)(1)(A) provides 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 this paragraph.

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.

Under § 301.9100-1(c), 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. Notice 2001-50, 2001-34 I.R.B. 189, 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.

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 the grant of 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 severance of Trust, as described above constitutes a qualified severance under § 2642(a)(3) (i.e., Trust was divided on a fractional basis and the terms of the B Irrevocable Trust - Grandchildren and the B Irrevocable Trust - Children, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust).

Further, based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Settlor, and Settlor as executor of Wife's estate, is granted an extension of time until 60 days after the date of this letter to allocate \$z of Settlor's and \$z of Wife's remaining available GST exemption to each of Settlor's and Wife's Years 1 through 7 transfers that are deemed to be made to B Irrevocable Trust - Grandchildren. The allocations will be effective as of the dates in Years 1 through 7 that the transfers to Trust, prior to its severance, were made and the gift tax values of the transfers to Trust will be used in determining the inclusion ratio with respect to B Irrevocable Trust - Grandchildren.

The allocations of GST exemption for Settlor and Wife should be made on Forms 709 to be filed reporting the transfers for Years 1 through 7. In addition, these returns must signify the appropriate consent to "split-gift" treatment under § 2513. The supplemental Forms 709 are to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. Two copies are enclosed for this purpose.

The ruling contained in this letter is 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.

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  
Copies of this letter

cc: