

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09 – PLR-101351-04

Date:

August 17, 2004

Ruling Request

Legend:

Trust =

Taxpayers =

Date 1 =

Company =

Dear

This is in response to your letter dated December 29, 2003, and subsequent correspondence, in which you requested an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Taxpayers' generation-skipping transfer (GST) tax exemptions to transfers made to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayers established an irrevocable trust (Trust) for the benefit of two classes of beneficiaries, Class A and Class B. The Class A beneficiaries consist of five named individuals, their children, and their issue born prior to the termination of Trust. The Class B beneficiaries consist of three named individuals.

Article IV(A) of Trust provides that the trustee has the discretion to distribute net income among the Class A and Class B beneficiaries. Income not distributed may be accumulated and distributed thereafter as if it were current income.

Article IV(B) provides that when Trust terminates, the trustee has the discretion to distribute the remaining trust income and principal among the Class A beneficiaries. There is no requirement to equalize payments among beneficiaries.

Article IV(E) provides that Trust will terminate one day prior to the date which is 21 years after the death of the survivor of the five named Class A beneficiaries.

On Date 1, Taxpayers contributed \$ a to Trust. Relying on their accountant, Taxpayers did not file Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns and Taxpayers' GST exemptions were not allocated to the Date 1 transfer to Trust. This failure was discovered by Taxpayer's counsel.

Taxpayers are requesting an extension of time under §§ 2642(g) and 301.9100-3 to allocate their GST exemptions to the Date 1 transfer to Trust and that such allocations will be based on the value of the property transferred to Trust on Date 1.

#### 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 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 2642(a) provides the method for determining the inclusion ratio.

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 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, 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.

Section 2642(b)(1) provides in relevant part that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] –

(A) the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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 the generation-skipping transfer tax.

Notice 2001-50, 2001-34 C.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 transfer 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.

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.

Conclusion:

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayers are granted an extension of time of sixty (60) days from the date of this letter to allocate their available GST exemptions to the Date 1 transfer to Trust. The allocations will be effective as of Date 1, and should be made based on the value of the property transferred to Trust on Date 1. The allocations should be made on gift tax returns filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each gift tax return filed. Copies are enclosed for this purpose.

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

This ruling is directed only to Taxpayers. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayers.

Sincerely,

Heather C. Maloy

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

Enclosure: Copy for § 6110 purposes  
Copies of this letter

cc: