

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:PSI:B09 – PLR-149141-03

Date:
November 20, 2003

In Re: Ruling Request

Legend:

Trust Agreement =

Trust 1 =

Trust 2 =

Residuary Trust =

Taxpayer 1 =

Taxpayer 2 =

Son 1 =

Son 2 =

Company =

Law Firm =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

This is in response to your letter dated August 6, 2003, and subsequent correspondence, in which you request an extension of time under § 301.9100-3 of the

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Procedure and Administration Regulations to make allocations of Taxpayer 1's and Taxpayer 2's generation-skipping transfer (GST) tax exemptions to transfers made to irrevocable trusts.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayer 1 executed a trust agreement (Trust Agreement) that established two irrevocable trusts, Trusts 1 and 2, for the benefit of the two sons of Taxpayer 1 and her spouse, Taxpayer 2. Son 1 is the beneficiary of Trust 1 and Son 2 is the beneficiary of Trust 2.

Article IV, Section 1 of Trust Agreement provides that the trustee of Trusts 1 and 2 may make discretionary distributions of all or part of each trust's net income and/or principal to the beneficiary thereof. Income not distributed is to be added to principal.

Article IV, Section 2 provides the beneficiary of each trust with an intervivos and testamentary power to appoint his trust estate among Taxpayer 1's descendants, other than the beneficiary and his estate and the spouse's of Taxpayer 1's descendants.

Article IV, Section 3 provides that the trustee of each trust is to distribute trust property not appointed to the beneficiary's then living descendants, per stirpes, if any; if none, to the then living descendants of the beneficiary's most immediate ancestor who was Taxpayer 1's descendant, per stirpes, if any; if none, to Taxpayer 1's then living descendants, per stirpes, if any; if none, to Taxpayer 1's heirs-at-law.

Article IV, Section 4 provides that if trust property is distributed to a person for whom a trust was established under Trust Agreement, the property is to be contributed to that trust and administered accordingly. Trust property distributed to any other person is to be held in trust for the benefit of that person and administered in accordance with Article IV of Trust Agreement.

Article VIII provides that all trusts created under Trust Agreement will terminate no later than 21 years after the date of death of the last to survive of a group consisting of Taxpayer 1, Taxpayer 1's descendants living on Date 1, and all natural persons named in Trust Agreement and their descendants alive on Date 1.

On Date 2, Taxpayer 1 transferred to Trust 1 a shares in Company, Taxpayer 1 and Taxpayer 2 valued at \$b. Also on Date 2, Taxpayer 1 transferred to Trust 2 c shares in Company, Taxpayer 1 and Taxpayer 2 valued at \$d. Taxpayer 1 and Taxpayer 2 retained Law Firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On their respective Form 709, Taxpayer 1 and Taxpayer 2 elected to treat Taxpayer 1's gift as made one-half by each pursuant to

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§ 2513 of the Internal Revenue Code. In preparing Taxpayer 1's and Taxpayer 2's Forms 709, Law Firm failed to effectively allocate their GST exemptions to the Date 2 gifts to Trusts 1 and 2.

Taxpayer 2 died on Date 3. Afterwards, Law Firm's failure to properly signify on the Forms 709 that each of the taxpayers intended to allocate their GST exemption to the trust was discovered. When the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed, a total of \$e of Taxpayer 2's GST exemption was allocated to certain testamentary transfers, \$f to four transfers to skip persons and \$g to a residuary trust (Residuary Trust). As a result, \$h of Taxpayer 2's GST exemption is available to be allocated to the Date 2 transfers to Trusts 1 and 2. This amount is in excess of the value of Taxpayer 2's portion (pursuant to § 2513) of the Date 2 transfers as reported on Taxpayer 1's and Taxpayer 2's Forms 709. It has been represented that all of Taxpayer 1's GST exemption is available to be allocated to the Date 2 transfers to Trusts 1 and 2 and that, other than the Date 2 transfers, there have been no other transfers to Trusts 1 and 2.

Taxpayer 1 is requesting an extension of time, under §§ 2642(g) and 301.9100-3, to allocate Taxpayer 1's available GST exemption to the Date 2 transfers to Trusts 1 and 2, and that such allocation will be based on the value of the property transferred to Trusts 1 and 2 on Date 2, so that Trusts 1 and 2 will have a zero inclusion ratio as of Date 2.

Taxpayer 2's estate is requesting an extension of time, under §§ 2642(g) and 301.9100-3, to allocate Taxpayer 2's available GST exemption of \$h to the Date 2 transfers to Trusts 1 and 2, and that such allocation will be based on the value of the property transferred to Trusts 1 and 2 on Date 2, so that Trusts 1 and 2 will have a zero inclusion ratio as of 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.

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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.

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 § 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

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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.

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 is granted an extension of time of sixty (60) days from the date of this letter to allocate her available GST exemption to the transfers to Trusts 1 and 2 on Date 2. The allocation will be effective as of Date 2, and the gift tax value of the transfers to Trusts 1 and 2 will be used in determining the amount of GST exemption to be allocated to Trusts 1 and 2.

In addition, Taxpayer 2's estate is granted an extension of time of sixty (60) days from the date of this letter to allocate Taxpayer 2's available GST exemption of \$h to the transfers to Trusts 1 and 2 on Date 2. The allocation will be effective as of Date 2, and the gift tax value of the transfers to Trusts 1 and 2 will be used in determining the amount of GST exemption to be allocated to Trusts 1 and 2.

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Trusts 1 and 2 will have a GST exemption of zero, provided the amount of GST exemption allocated to the Trusts by Taxpayer 1 and Taxpayer 2's estate is equal to the amount Taxpayer 1 and Taxpayer 2 transferred to Trusts 1 and 2 on Date 2 for federal gift tax purposes.

The allocations should be made on supplemental Forms 709 for the Date 2 year 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 rulings contained in this letter are based upon information and representations submitted by the taxpayer(s) 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 property Taxpayer transferred to Trusts 1 and 2 on Date 2 for federal transfer tax purposes.

This ruling is directed only to the taxpayer(s) requesting it. 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 your taxpayer(s).

Sincerely,

Heather C. Maloy

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

Enclosure: Copy for § 6110 purposes
Two copies of this letter

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cc: