

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
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PLR-141808-04
Date:
November 17, 2004

Legend:

Taxpayer 1 =

Taxpayer 2 =

Date 1 =

Trust A =

Trust B =

Trust C =

Child A =

Child B =

Child C =

Z =

Accounting =

Firm

Year 1 =

Year 2 =

Dear :

This is in response to your letter dated August 3, 2004, on behalf of Taxpayer 1 and Taxpayer 2, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of Generation-Skipping Transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer 1 and Taxpayer 2 established Trust A, Trust B, and Trust C, irrevocable trusts for the primary benefit of Child A, Child B, and Child C, respectively.

Article I of Trust A provides that during the lifetime of Child A, all of the net income of the trust shall be paid to Child A at least quarter annually. The trustees shall

pay to, or apply for the benefit of, Child A as much of the principal of the trust as the trustees, other than Taxpayer 1 and Taxpayer 2, determine to be necessary for the health, support, maintenance and education of Child A. On Child A's death, any accrued or undistributed income shall be distributed to Child A's estate. Any then remaining principal shall be paid to or in trust for such one or more of Child A's descendants, in such amounts or proportions as Child A may appoint by will. Any principal not effectively appointed by Child A shall be distributed to Child A's then living descendants, per stirpes, or if none, to Taxpayer 1 and Taxpayer 2's other then living descendants, per stirpes.

The dispositive provisions of Trust B and Trust C are identical to those contained in Trust A except for the identity of the beneficiaries.

Also on Date 1, Taxpayer 1 and Taxpayer 2 transferred \$z cash to each of Trust A, Trust B, and Trust C. It is represented that no other contributions have been made to the trusts. Taxpayer 1 and Taxpayer 2 relied on Accounting Firm to prepare and file Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns ("gift tax returns") for Year 1. Taxpayer 1 and Taxpayer 2 each elected under § 2513 to treat the gifts made by them to third parties during the calendar year as made one-half by each of them. Taxpayer 1 and Taxpayer 2's transfers to Trust A, Trust B, and Trust C were reported on the gift tax returns; however, due to an oversight, Accounting Firm did not allocate any of Taxpayer 1 and Taxpayer 2's respective GST exemptions to the transfers made to the trusts.

In Year 2, Accounting Firm conducted a review of all estate planning documents executed by Taxpayer 1 and Taxpayer 2 and discovered that no allocation of Taxpayer 1's and Taxpayer 2's respective GST exemptions had been made to the trusts on the Year 1 gift tax returns.

Taxpayer 1 and Taxpayer 2 have requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1's and Taxpayer 2's respective GST exemptions with respect to the Year 1 transfers to Trust A, Trust B, and Trust C; (2) that the allocations will be made based on the value of the property transferred to the trusts as of the date of the original transfers; and (3) that if relief is granted and if such allocations are made, Trust A, Trust B, and Trust C will each have an inclusion ratio of zero as of Date 1.

Section 2601 imposes a tax on every 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 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 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

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)), 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, 2001-2 C.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 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 their respective available GST exemptions, with respect to the transfers to Trust A, Trust B, and Trust C. The allocations will be effective as of the date of the transfers, and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts. If allocations of GST exemption are made pursuant to the grant of relief in this letter ruling and provided the amount of GST exemption allocated to each of the trusts is equal to the gift tax value of the transfer to the trusts on Date 1, each of the trusts will have an inclusion ratio of zero as of Date 1.

The allocations should be made on Forms 709 filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each supplemental Form 709. 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 accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer 1 and Taxpayer 2.

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 & Special Industries)

Enclosures

Copy for section 6110 purposes
Copies of letter