

Internal Revenue Service

Department of the Treasury

Number: **200306031**
Release Date: 02/7/2003
Index Numbers: 2642.00-00; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-139088-02
Date:
November 5, 2002

Re:

LEGEND:

- Taxpayer 1 =
- Taxpayer 2 =
- Year 1 =
- Law Firm =
- Date 1 =
- Trust =

- A =
- Date 2 =
- a =
- Corporation =
- B =
- Date 3 =
- b =
- C =
- Date 4 =
- c =
- D =
- Date 5 =

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d =

E =

e =

F =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Date 6 =

Dear :

This is in response to your letter dated June 26, 2002, on behalf of Taxpayer 1 and Taxpayer 2, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Generation-Skipping Transfer (GST) exemptions.

The facts and representations submitted are summarized as follows: In Year 1, Taxpayer 1 engaged Law Firm, a firm that had advised Taxpayer 1 regarding his estate planning for several years, to draft an irrevocable trust for the benefit of his children and grandchildren. On Date 1, Taxpayer 1 executed Trust and funded it with \$A.

Article First of Trust provides that the trustee shall divide the initial corpus into four equal shares and hold each share in a separate trust, one for each of Taxpayer 1's children. Any additional property received by the trustee at any time shall be added equally to and made a part of the principal of each of the trusts.

Article Second of Trust provides that each share of property to be held in trust for a particular child of Taxpayer 1 shall be administered, together with any additions, in a separate trust as follows: (a) All or any part of the net income and principal of the trust may be paid to any one or more of the child and the child's issue, in such amounts and proportions and at such time or times as the trustee, in his discretion, thinks advisable for any purpose; (b) Upon the child's death, the then remaining principal and any balance of net income shall be distributed by right of representation to the child's then living issue, or if none, by right of representation to Taxpayer 1's then living issue; except that any property distributable to any other child of Taxpayer 1 for whom a trust is then being administered under Article Second shall be added to the principal of the other child's trust, and any property distributable to any grandchild or more remote

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descendant of Taxpayer 1 who is then under the age of twenty-five (25) shall be held in trust for the particular beneficiary as provided in Article Third, instead of being distributed outright.

Article Third of Trust provides that all property provided under Article Second to be held in trust for a particular grandchild or more remote descendant of Taxpayer 1 shall be combined and administered in a single separate trust for the beneficiary as follows: (a) All or any part of the net income and principal may be paid to the beneficiary from time to time as the trustee, in his discretion, thinks advisable for any purpose. Any net income not so paid may be added to principal at any time; (b) When the beneficiary reaches the age of twenty-five (25), the then remaining principal and any balance of net income shall be distributed to the beneficiary. If the beneficiary dies before reaching the age of twenty-five (25), the principal and any balance of net income remaining at the beneficiary's death shall be distributed to the beneficiary's executors or administrators, to be disposed of as part of the beneficiary's estate.

On Date 2, Taxpayer 1 transferred a shares of Corporation stock to Trust, with a reported value of \$B. On Date 3, Taxpayer 1 transferred b shares of Corporation stock to Trust, with a reported value of \$C. On Date 4, Taxpayer 1 transferred c shares of Corporation stock to Trust, with a reported value of \$D. On Date 5, Taxpayer 1 transferred d shares of Corporation stock to Trust, with a reported value of \$E. Also on Date 5, Taxpayer 2 transferred e shares of Corporation stock to Trust, with a reported value of \$F.

It is represented that Law Firm prepared and filed Taxpayer 1's and Taxpayer 2's gift tax returns for Year 2, Year 3, and Year 4, reporting the transfers to Trust and the election by Taxpayer 1 and Taxpayer 2 to split gifts made by them to third parties during the calendar year under § 2513. It is also represented that to the best of Taxpayer 1's, Taxpayer 2's, and Law Firm's knowledge and belief, the gift tax returns for Year 2, Year 3, and Year 4 were timely filed. No allocation of Taxpayer 1's or Taxpayer 2's GST exemption was made with respect to Trust on the Year 4 gift tax returns.

As in previous years, Law Firm advised Taxpayer 1 and Taxpayer 2 and prepared their Year 5 gift tax returns, which were filed on Date 6. On the Year 5 gift tax returns, Taxpayer 1 and Taxpayer 2 elected to split gifts made by them to third parties during the calendar year under § 2513. No allocation of Taxpayer 1's or Taxpayer 2's GST exemption was made on the Year 5 gift tax returns.

No additional transfers have been made to Trust and no distributions have been made from Trust to Taxpayer 1's grandchildren.

Taxpayer 1 and Taxpayer 2 have requested the following ruling: an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3

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to make allocations of Taxpayer 1's and Taxpayer 2's GST exemptions for the transfers to Trust in Year 4 and Year 5.

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) 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.

As applicable to transfers made during Year 4 and Year 5, § 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 timely filed gift tax return or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips], the value of such property for purposes of § 2642(a) shall be its value for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer.

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). 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 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. For purposes of determining whether to grant relief, the time for making the allocation 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

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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, Taxpayers 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 their transfers to Trust in Year 4 and Year 5. The allocations will be effective as of the date of the transfers to Trust, and the allocations will be made based on the value of the property transferred to Trust as of the date of the transfers.

The allocations should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709. A copy is enclosed for this purpose.

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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 Trust.

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

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

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for section 6110 purposes
Copy of this letter