

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-147591-03
Date:
October 1, 2003

Legend

Taxpayer =

Spouse =
Trust =

Date 1 =
x =
Year 1 =
Year 2 =
y =

Dear Sir:

This is in response to your letter dated August 8, 2003, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code, to make an allocation of Generation-Skipping Transfer Tax exemption.

Taxpayer and Spouse created Trust on Date 1 to benefit their issue. At the time of the transfers in question Taxpayer and Spouse had one daughter.

Section II of the Trust agreement provides that the trustee shall divide the trust estate into two parts, Part A and Part B. Part A represents the portion of Trust exempt

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from the generation-skipping transfer tax; Part B represents the portion of the Trust not exempt from the generation-skipping transfer tax.

Section IV of the Trust agreement relates to the administration of Part A and provides that, during Taxpayer and Spouse's lives, the trustee shall distribute to Taxpayer and Spouse's children and more remote descendants, as much income and principal as the trustee determines to be necessary and appropriate to provide for their health, education, maintenance and support in accordance with their stations in life, considering all other sources of income available to them. Any income not distributed shall be accumulated and added to principal.

Potential beneficiaries include individuals who are two or more generations below the grantor's generation, therefore, distributions from Trust may be subject to the generation-skipping transfer tax.

Taxpayer and Spouse transferred stock in a closely-held corporation they valued at \$x to Trust in Year 1. In Year 2, Taxpayer and Spouse transferred stock in the closely-held corporation they valued at \$y to Trust. The taxpayers represent that the entire amount of both transfers were allocated to Part A. The property transferred in both Year 1 and Year 2 was community property. Taxpayer and Spouse relied on a qualified tax professional to prepare any necessary tax returns for Year 1 and Year 2. The qualified tax professional failed to advise Taxpayer of the necessity to file gift tax returns for Year 1 and Year 2 for either spouse. Neither spouse's generation-skipping transfer tax, therefore, was properly allocated to either transfer.

Taxpayer has requested an extension of time to make an allocation of generation-skipping transfer tax exemption with respect to the assets transferred to Trust.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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 generation-skipping transfer tax 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 generation-skipping transfer tax exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for the individual's estate (determined with regard to extensions), regardless of whether a return is required to be filed.

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Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the generation-skipping transfer tax 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, on and after the close of the estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe the circumstances and procedures under which extensions of time will be granted to make an allocation of generation-skipping transfer tax exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). The 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, 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, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the generation-skipping transfer 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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3(a). Requests for relief under § 301.9100-3(a) 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.

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

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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.

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 is granted an extension of time of 60 days from the date of this letter to properly allocate his generation-skipping transfer tax exemption by filing a Form 709 with a notice of allocation for Year 1 and Year 2. The allocations will be effective as of the date of the transfer, and the gift tax value of the transfer to Trust will be used in determining the amount of generation-skipping transfer tax exemption to be allocated to Trust. The inclusion ratio for Trust will be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to each Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to taxpayer's representative.

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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.

Sincerely,

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

Enclosures

Copy of this letter for § 6110 purposes

Copy of this letter