

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

October 1, 2003

Legend

Grantor =

Trust A =

Trust B =

Date 1 =

Grandchild 1 =

Grandchild 2 =

Year 1 =

Husband =

z =

y =

Partnership =

Wife =

Year 2 =

x =

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Dear _____ :

This is in response to your letter dated April 4, 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.

The facts and representations submitted are summarized as follows: Grantor created Trust A and Trust B on Date 1. The trusts are irrevocable trusts created to benefit Grantor's grandchildren. Trust A and Trust B have similar provisions and differ only in the name of the primary beneficiary of each trust. The primary beneficiary of Trust A is Grandchild 1. The primary beneficiary of Trust B is Grandchild 2.

Each trust agreement lists Wife as trustee. Item I(b) of each trust provides that during the primary beneficiary's lifetime, the trustee shall distribute to or for the benefit of the primary beneficiary and/or any of the primary beneficiary's issue as much income and/or principal of the trust as the trustee deems necessary or advisable to provide for the health, maintenance, and support of the primary beneficiary and the primary beneficiary's issue in accordance with their accustomed standard of living and to provide for the education of the beneficiaries.

In Year 1, Husband transferred a $z\%$ limited partnership interest in Partnership to each trust. Husband retained a $y\%$ general partnership interest in Partnership. Husband intended for generation-skipping transfer tax exemption to be allocated to the transfer and relied on his accountant to properly make the allocation. Husband's Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, ("gift tax return") was timely filed. Husband and Wife elected under § 2513 to split gifts for Year 1. Husband's accountant made mistakes in valuing the partnership interests and in allocating Husband's generation-skipping transfer tax exemption on Husband's gift tax return.

In Year 2, Husband transferred \$ x to each trust. Husband intended for generation-skipping transfer tax exemption to be allocated to the transfer and relied on his accountant to properly make the allocation. Husband and Wife elected under § 2513 to split gifts for Year 2. Husband's Year 2 gift tax return was timely filed but Husband's accountant did not list the transfers to Trust A and Trust B on the return. Consequently, none of Husband's generation-skipping transfer tax exemption was allocated to the transfers made in Year 2.

Husband has requested an extension of time to make allocations of generation-skipping transfer tax exemption with respect to the assets transferred to Trust A and Trust B in Year 1 and Year 2.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of this chapter, be considered as made

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one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 25.2513-2(a)(1)(ii) of the Gift Tax Regulations provides that consent to the application of the provisions of § 2513 with respect to a "calendar period" shall, in order to be effective be signified by both spouses. If both spouses file gift tax returns within the time for signifying consent, it is sufficient if the consent of each spouse is signified on his own return.

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)) which 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 such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

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 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 generation-skipping transfer tax 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 this paragraph.

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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, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the generation-skipping transfer tax 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.

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, Husband is granted an extension of time of 60 days from the date of this letter to file supplemental Forms 709 with notices of allocation for Year 1 and Year 2. Each allocation will be effective as of the date of the transfer, and the gift tax value of each transfer will be used in

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determining the amount of the generation-skipping transfer tax exemption allocated to each trust. The inclusion ratio for the trusts should be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to each supplemental 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. Specifically, we have not expressed an opinion as to whether the Year 1 transfers to Trust A and Trust B are subject to an estate tax inclusion period under § 2642(f). In addition, we have specifically not ruled on the value of the Year 1 transfers to Trust A and Trust B.

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.

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