

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-159788-02

Date:

February 21, 2003

In Re:

LEGEND:

Trust 1 =

Trust 2 =

Trust 1 Beneficiary =

Trust 2 Beneficiary =

Trustor =

Spouse =

Settlors =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Partnership =

State =

Year 1 =

Year 2 =

Year 3 =

a =

b =

c =

d =

e =

X =

Y =

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Dear _____ :

This is in response to your letter dated October 24, 2002, 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 allocations of Trustor's generation-skipping transfer (GST) tax exemption to transfers made to irrevocable trusts.

A summary of the facts and representations submitted is as follows. On Date 1, Trustor and Spouse (Settlors) formed Trust 1 and Trust 2 (collectively, Trusts), one for the benefit of each of their two children and their children's descendants. The terms of the Trusts are identical except for the name of the beneficiary.

Article III.B.1 of each Trust provides that the child for whom the trust was established shall receive the Trust's net income at quarter-annual or more frequent intervals. If the trustee deems the income to be insufficient, trust principal may be distributed to the child to provide for the child's proper support, health care, and education.

Article III.B.3 provides that the trustee shall have the power to invade trust principal to provide for the proper support, health care, and education of any of the child's issue.

Article III.B.4 provides the child with a testamentary limited power to appoint the then remaining balance of the trust estate (other than any insurance policies or proceeds of any insurance policies on the child's life) among the Settlor's then living issue, if any; if none, to persons or entities selected by the child. Child may not appoint trust estate to himself or herself, his or her estate, his or her creditors, or the creditor's of his or her estate.

Articles III.B.5 and III.B.6 provide that trust estate not appointed shall be administered for the benefit of the child's then living issue, if any, pursuant to the terms of Article III.C; if none, Settlor's then living issue shall receive the trust estate, by right of representation.

Article III.D provides that, in the event all the Settlor's issue are deceased prior to the full distribution of the trust estate, the trust estate shall be distributed as if Settlor died intestate in State, one-half to the Trustor's heirs and one-half to Spouse's heirs. Any portion of the trust estate distributed to a person who is under age 40 shall be held in further trust until that person attains age 40.

On Date 1, Settlor's jointly transferred \$a to each Trust. Approximately, three months later on Date 2, Settlor's jointly transferred \$b to each Trust. Approximately four months later on Date 3, Trustor assigned an X limited partnership interest in Partnership to each Trust. The Date 1, Date 2, and Date 3 transfers all occurred in Year 1. Trustor retained an accounting firm to prepare the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the Date 1, Date 2, and Date 3

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transfers to each Trust. The Form 709 the accounting firm prepared for Trustor mistakenly indicated that Trustor made a gift of a Y limited partnership interest in Partnership, rather than a gift of an X limited partnership interest in Partnership (one-half of Y) to each Trust. Further, the accounting firm failed to allocate Trustor's GST exemption to the Date 1, Date 2, and Date 3 transfers to each Trust.

On Date 4, Settlers jointly transferred \$c to each Trust. On Date 5, Settlers jointly transferred \$d to Trust 1. Trustor did not file Forms 709 reporting the Date 4 and Date 5 transfers, occurring in Year 2 and Year 3, respectively.

On Date 6, Trustor's attorney discovered both that the accounting firm had incorrectly reported that a Y limited partnership interest in Partnership was transferred to each Trust on Date 3 and the failure to allocate a portion of Trustor's GST exemption to the Date 1, Date 2, and Date 3 transfers to each Trust. On Date 7, Trustor's attorney discovered Trustor's failure to file Forms 709 for Year 2 and Year 3 reporting the Date 4 and Date 5 transfers and allocating GST exemption thereto.

Trustor has represented that Trustor has not made any other transfers to trusts or skip persons, to which Trustor's GST exemption was or was required to be applied except for a Date 8 gift of \$e Settlers made jointly to Trust 1, the Form 709 for which is not yet due. Trustor has also represented that Trustor has sufficient GST exemption available to apply to the Date 1, Date 2, Date 3, Date 4, Date 5, and Date 8 transfers.

Trustor requests an extension of time under §§ 2642(g)(1) and 301.9100-3 to make a late GST exemption allocation to the Date 1, Date 2, Date 3, Date 4, and Date 5 transfers to the Trusts and that such allocation will be based on the value of the property transferred to the Trusts on Date 1, Date 2, Date 3, Date 4, and Date 5, respectively.

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) as in effect for the year involved, 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.

Section 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 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.

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. 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.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2624(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.

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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.

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, Trustor is granted an extension of time of sixty (60) days from the date of this letter to make allocations of Trustor's GST exemption to the Date 1, Date 2, Date 3, Date 4, and Date 5 transfers to the Trusts. The allocations will be effective as of Date 1, Date 2, Date 3, Date 4, and Date 5, respectively, 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. The allocations should be made on Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 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 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 the property transferred to the Trusts.

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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.

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

Sincerely,

Heather C. Maloy

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

Enclosures: Copy for § 6110 purposes
Copies of this letter