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Department of the Treasury

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Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4 - PLR-156880-02
Date: MARCH 05, 2003

Re:

Legend:

Date 1 =
Husband =

Wife =

Trust =

y =
Year 1 =
Year 2 =
Year 12 =
CPA Firm =
Date 2 =
Attorney =

Dear :

This is in response to a letter dated October 7, 2002, and subsequent correspondence, 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 Generation-Skipping Transfer (GST) exemptions to transfers to a trust.

The facts and representations submitted are summarized as follows: On Date 1, Husband established an irrevocable trust (Trust) for the benefit of his spouse, his children, and their issue, transferring \$y to the trust.

Under the terms of Trust, the trustees must allocate all property received (unless directed to allocate to a specific share) to shares among Husband's issue then living by right of representation. Each share will be held as a separate trust.

Whenever a gift is made to Trust to be added to a separate trust for a child of Husband, that child and that child's then living issue have rights to withdraw amounts

from the principal of the separate trust within 30 days of receiving notice of the gift, but not later than the end of the calendar year of the gift. Unless the donor directs otherwise, the amount that may be withdrawn by each person is the lesser of the value of the gift divided by the number of persons having such rights with respect to such gifts and the maximum amount then permitted as an annual exclusion from taxable gifts to a single donee under § 2053(b).

The trustees must pay to any among Wife, the child for whom a trust is held, and that child's issue, any part of the net income and principal (other than principal required to satisfy unexpired withdrawal rights) of the child's trust as the disinterested trustee deems desirable for the health, education, maintenance and support of a beneficiary. However, each distribution to Wife must be charged pro rata against each child's share and the share of each further descendant of Husband. After the deaths of both Husband and Wife, the trustees must also pay from a child's trust any part of the principal that the child requests, not to exceed in the aggregate in any calendar year the greater of \$5,000 or 5 percent of the value of the trust principal at the time of the request. On the death of a child for whom a trust is held, the remaining trust assets will be distributed as the child appoints. To the extent the child fails to appoint those assets, they will be distributed by right of representation to Husband's then living issue; however, any portion for a child or further descendant of Husband for whom a trust is then held under the terms of Trust must be added to that trust.

The trustees must hold in a separate trust any share retained or received by them for the benefit of a further descendant of Husband under terms substantially identical to those for a child's trust.

Trust terminates 21 years after the death of the last to survive among Husband, Wife, and all of their issue living when Trust was created.

In Year 1, Husband and Wife (Taxpayers) engaged CPA Firm to prepare their individual income tax returns and all tax returns relating to Trust.

For 11 years, from Year 2 through Year 12, Taxpayers each transferred amounts to Trust at least annually for the benefit of their two children and of their grandchildren. CPA Firm failed to advise them to file Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for, and to allocate Taxpayers' GST exemptions to, any of these transfers.

On Date 2, Taxpayers sought estate planning advice from Attorney who discovered the failure to allocate Taxpayers' GST exemptions to the transfers to Trust in Years 1 through 12. It is represented that there have been no distributions since the creation of Trust.

Taxpayers have requested an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to allocate Taxpayers' GST

exemptions to the transfers to Trust in Years 1 through 12. Taxpayers also request a ruling that such allocations are to be made based on the value of the assets transferred to Trust as of the dates of transfer to Trust.

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.

Under § 2602, the amount of tax imposed under § 2601 is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally the excess (if any) of 1 over the applicable fraction determined for the trust from which such transfer is made. The applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

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)) 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.

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) 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 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 this paragraph.

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 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, Taxpayers are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayers' available GST exemptions, with respect to Taxpayers' transfers to Trust from Year 1 through Year 12. Each allocation will be effective as of the date of the respective transfer to Trust, and the gift tax value of each transfer to Trust will be used in determining the amount of GST exemption to be allocated to Trust for that transfer.

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.

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. This election should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter