

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-165966-02

Date:

March 27, 2003

In Re:

### LEGEND:

Trust =

Taxpayer 1 =

Taxpayer 2 =

Date 1 =

Date 2 =

Date 3 =

Fund 1 =

Fund 2 =

Year 1 =

Year 2 =

Year 3 =

a =

\$a =

b =

\$b =

c =

\$c =

\$d =

X =

Y =

Z =

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Dear \_\_\_\_\_ :

This is in response to your letter dated November 27, 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 allocate your generation-skipping transfer (GST) tax exemptions to certain transfers to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayer 1 and Taxpayer 2 (Taxpayers) formed Trust for the benefit of their daughter and her descendants.

Article Two, subsection A of the Trust provides that the trustee is to pay daughter trust principal and income deemed necessary for her support and maintenance. Income not distributed is to be added to principal. Article Two, subsection B provides daughter with a testamentary limited power to appoint trust property to her lineal descendants.

Pursuant to Article Two, subsection C, the trustee is to hold any trust property not appointed by daughter at her death in further trust for the benefit of Taxpayers' grandchildren until all of the grandchildren reach age 21 or die prior thereto. During this period, referred to as the trust term, the trustee has the discretion to pay trust income and principal for the grandchildren's benefit.

Article Two, subsection D provides that at the expiration of the trust term, i.e., when all of the grandchildren reach age 21 or have died prior thereto, the trustee is to divide the trust property into equal shares and apportion one share to each then living grandchild and one share to the then living issue, per stirpes, of each deceased grandchild. Pursuant to Article Two, subsection D.1, the trustee is to distribute to the issue of a deceased grandchild the share apportioned to them, per stirpes, free of trust. Article Two, subsection D.2 provides that the trustee is to distribute to each grandchild over age 35 the share apportioned to him or her, free of trust.

Article Two, subsection D.3 provides that the trustee is to hold in further trust each share that is apportioned to a grandchild under age 35. The trustee is to pay the grandchild trust net income, annually or at more frequent intervals, and trust principal at the trustee's discretion. Article Two, subsection D.4 provides that the trustee is to pay the grandchild one-third of the trust principal when the grandchild reaches age 25, one-half of the remaining trust principal when the grandchild reaches age 30, and the remaining trust principal when the grandchild reaches age 35.

Article Two, subsections D.5 and E provide that if a grandchild dies prior to reaching age 35, the trust will terminate and the trustee will distribute trust property to (1) the grandchild's surviving issue, per stirpes; or, in default thereof, (2) to Taxpayers' then living grandchildren and the then living issue, per stirpes, of any deceased grandchild; or, in default thereof, (3) to X, Y, and Z, one-third each.

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On Date 2, Taxpayer 1 transferred a shares in Fund 1, valued at \$a, and b shares in Fund 2, valued at \$b, to the Trust. Also on Date 2, Taxpayer 2 transferred c shares in Fund 2, valued at \$c, to the Trust. Taxpayers retained an accountant to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting the Date 2 gifts. In preparing the Forms 709, the accountant inadvertently failed to allocate Taxpayers' GST exemptions to the gifts made to the Trust in Year 1.

On Date 3, Taxpayer 1 transferred \$d to the Trust. Taxpayers retained an accountant to prepare Taxpayer 1's Year 2 Form 709, reporting the Date 3 gift. On Taxpayer 1's Year 2 Form 709, Taxpayer 2 consented to have the gifts made by Taxpayer 1 to third parties during Year 2 as made one-half by each. In preparing the Form 709, the accountant inadvertently failed to allocate Taxpayers' GST exemptions to the gift to the Trust made in Year 2. In Year 3, Taxpayers' attorney discovered that Taxpayers' accountant inadvertently failed to allocate Taxpayers' GST exemptions to the gifts to the Trust made in Years 1 and 2. Supplemental Forms 709 for Years 1 and 2 were prepared and filed in Year 3 to make late allocations of Taxpayers' GST exemptions to the transfers on Date 2 and Date 3.

You have represented that you have made no additional gifts to the Trust and that you each have sufficient remaining GST exemption available to apply to the Year 1 and Year 2 gifts to the Trust.

You have requested an extension of time under §§ 2642(g)(1) and 301.9100-3 to allocate your GST exemptions to the gifts made to the Trust on Date 2 and Date 3 and that, for GST tax purposes, your allocation will be based on the value of the property transferred to the Trusts on Date 2 and Date 3, 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 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.

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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.

As applicable during the years at issue, § 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) [deemed allocations to certain lifetime direct skips] --

(A) the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for purposes of chapter 12 [the gift tax], and

(B) 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) 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 § 2642(g)(1), 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.

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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.

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.

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) 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 sixty (60) days from the date of this letter to allocate their available GST exemptions to the Date 1 and Date 2 transfers to the Trust. Taxpayers' allocations will be effective as of Date 1 and Date 2, respectively, and the gift tax value of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust.

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The allocation for Taxpayers should be made on separate supplemental Forms 709 for Years 1 and 2, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. Copies are enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by Taxpayers 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 Trust for federal transfer tax purposes.

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  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: Copy for § 6110 purposes  
Copies of this letter

cc: