

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B9-PLR-127062-03

Date:

May 27, 2003

Re:

Legend

Taxpayers =

Date 1 =

Trust =

Son =

Year 1 =

Stock =

X =

CPA =

Year 2 =

Dear :

This is in response to your authorized representative's letter dated March 20, 2003, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Taxpayers' generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayers executed an irrevocable trust, Trust, for the benefit of Son. Prior to Trust's execution, Taxpayers had been informed by their attorney that a transfer to Trust would require the filing of a gift tax return to make the allocations of Taxpayers' respective GST exemptions.

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Section A, Article II of Trust provides that until Son attains age 35, the trustee may pay to Son as much of Trust, up to the whole thereof, as the consultant deems appropriate. Any income not distributed will be added to principal at the end of Trust's tax year. Once Son attains age 35, the trustee will pay the entire net income of Trust to Son, in quarterly or more frequent installments, for the duration of Trust. In addition, the trustee may distribute principal to Son as may be necessary for Son's reasonable support or medical needs.

Article II further provides that before attaining age 35, Son will have a limited testamentary power to appoint the principal and any undistributed income of Trust to one or more of his descendants. After attaining age 35, Son will have a limited testamentary power to appoint the principal and any undistributed income of Trust to any one or more persons or entities in such proportions as Son designates. Son may not exercise this limited testamentary power of appointment in favor of Son, his estate, his creditors, or creditors of his estate. If Son fails to exercise his limited power of appointment, then the remaining balance of the trust estate is to be distributed to Son's then living descendants by right of representation.

Article II, Section D provides that Trust, and any trusts created under Trust, shall terminate and be distributed to the primary beneficiary thereof not later than 21 years after the death of the last to die of Son and all of his descendants living at the date of the execution of Trust.

Pursuant to Section B, Article 1, A.24, the trustee may allocate all or any portion of the Taxpayers' exemption from generation-skipping transfer tax under § 2631(a) as the trustee, in his discretion, determines.

In Year 1, Taxpayers each gifted Stock, valued at \$x for gift tax purposes, to Trust. CPA prepared and timely filed Taxpayers' Year 1 gift tax returns reporting the transfers of Stock to Trust. However, during a review of Taxpayers' estate plan in Year 2, it was discovered that CPA had inadvertently failed to allocate Taxpayers' respective GST exemptions to the Year 1 transfers of Stock to Trust.

Taxpayers have requested an extension of time to make allocations of their respective GST exemptions to their Year 1 transfers of Stock to Trust, and a ruling that such allocations will be effective as of the date of the transfers 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.

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)) 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 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, United States Gift (and Generation-Skipping Transfer) Tax Return.

As applicable to transfers made during Year 1, § 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 timely filed gift tax return 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 for purposes of chapter 12, 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). 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 into law 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.

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.

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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 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 exemption with respect to Taxpayers' transfers to Trust in Year 1. The amount of the allocations is to be based on the value of the property transferred to Trust on the date of the transfers, and the allocations will be effective as of the date of the transfers.

These allocations 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 each supplemental Form 709. A copy is 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 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. In addition, we express or imply no opinion regarding the value of the property transferred to the Trust.

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

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 section 6110 purposes
Copy of this letter