

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 / PLR-143381-03

Date:

October 1, 2003

Legend

Taxpayer 1 =

Trust =

Date 1 =

Taxpayer 2 =

Child 1 =

Child 2 =

Child 3 =

Child 4 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

Grandchild 6 =

Grandchild 7 =

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Grandchild 8 =
 Nephew =
 x =
 Year 1 =

Dear Sir:

This is in response to your letter dated July 1, 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.

Taxpayer 1 created Trust on Date 1. Trust is an irrevocable trust that holds insurance on Taxpayer 2's life. Taxpayer 1 and Taxpayer 2's are married. The discretionary beneficiaries of Trust are the children and grandchildren of Taxpayer 1 and Taxpayer 2: Child 1, Child 2, Child 3, Child 4, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, Grandchild 5, Grandchild 6, Grandchild 7, and Grandchild 8. The current trustees of Trust are Child 3, Child 4, and Nephew.

Article First provides that during Taxpayer 2's lifetime, the trustees may pay income and principal, even to the extent of all principal, as the trustee(s) (other than the children of Taxpayers) shall, in their absolute discretion determine, to Taxpayers' children living at the time of any payment, in equal shares. The power to pay principal shall be subordinate to the exercise of any power of withdrawal conferred by Article Second of the trust agreement. Any income not paid shall be added to principal.

Article Fourth provides that upon the death of Taxpayer 2, the trust property shall be divided by the trustees into that number of equal shares that will provide one share for each of the children of Taxpayer 1 who are then living, and one share of the then living descendants, collectively, of each of the children of Taxpayer 1 who are then deceased. Each share shall be set aside and held by the trustees as a separate trust bearing the name of the child of Taxpayer 1 for whom or for whose descendants the share has been set aside.

Article Fourth, paragraph C provides that unless terminated sooner, each of the trusts for the benefit of descendants of Taxpayer 1 shall terminate twenty-one years after the death of the last to die of Taxpayer 1 and the descendants of Taxpayer 1 living on Date 1 or, if earlier, when there is no longer a living beneficiary of the trust. Upon termination, the principal as it shall then exist, together with all then accrued and undistributed income, shall be paid over to the then living descendants of Taxpayer 1 who were beneficiaries of the trust (other than a child of Taxpayer), per stirpes. If there are no living descendants of Taxpayer 1 who were beneficiaries of the trust, the trust assets shall be paid to the then living descendants of Taxpayer 1 (other than a child of Taxpayer, if there are more remote descendants), per stirpes. Any property becoming

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distributable to the descendants of Taxpayer 1 who are then the beneficiaries of another trust created pursuant to Article Fourth of the trust agreement shall not vest in them, but shall be added to the trust for their benefit.

Potential beneficiaries include individuals who are two or more generations below the grantor's generation, therefore, distributions from Trust may be subject to the generation-skipping transfer tax.

Taxpayer 1 transferred \$x to Trust in Year 1. Taxpayer 1 and Taxpayer 2 each reported the transfer on a timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer 1 and Taxpayer 2 elected to split gifts for Year 1 under § 2513. Accordingly, the transfer to Trust is treated as if made one-half by each of them. Taxpayer 1 and Taxpayer 2 relied on an accounting firm to prepare their Year 1 gift tax returns. The accountant mistakenly allocated generation-skipping transfer tax exemption to only one-fifth of the transfer to Trust.

Taxpayer 1 and Taxpayer 2 have requested an extension of time to make allocations of generation-skipping transfer tax exemption with respect to the assets transferred to Trust.

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 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)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

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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 the individual's estate (determined with regard to extensions), regardless of whether 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 the estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe the 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). The 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, 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 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(a). Requests for relief under § 301.9100-3(a) will

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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.

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.

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, Taxpayer 1 and Taxpayer 2 are 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. The allocation will be effective as of the date of the transfer, and the gift tax value of the transfer to Trust will be used in determining the amount of generation-skipping transfer tax exemption to be allocated to Trust. The inclusion ratio for Trust will be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to the 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.

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.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to taxpayer's representative.

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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

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