

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09 – PLR-141041-03

Date:

November 06, 2003

Legend:

Taxpayer 1 =

Taxpayer 2 =

Date 1 =

Trust A =

Date 2 =

Trust B =

Year 1 =

a =

Year 2 =

b =

Year 3 =

c =

Year 4 =

Year 5 =

Year 6 =

d =

Year 7 =

Year 8 =

Year 9 =

e =

Accountant =

Date 3 =

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

This is in response to your letter dated July 7, 2003, on behalf of Taxpayer 1 and Taxpayer 2, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer 1 and Taxpayer 2 established Trust A, an irrevocable trust for the benefit of their children and more remote descendants.

Article V, paragraph 5.01 of Trust A provides that the beneficiaries of the trust are the children of Taxpayer 1 and Taxpayer 2 ("Settlors"), the Settlor's grandchildren (including all grandchildren who are subsequently born to or legally adopted by Settlor's children), and all descendants of any deceased grandchild. Paragraph 5.01 further provides that until the deaths of the Settlor's, the trustee shall hold the trust estate, including all additions, as an undivided fund for the benefit of the beneficiaries. During such time, the trustee shall have the power to distribute the net income and principal of the trust to the beneficiaries in such amounts as the trustee, in the trustee's sole discretion, shall determine. Upon the death of the last to die of the Settlor's, the trustee shall divide the trust estate into five equal shares named respectively for the Settlor's children. Upon the death of any of Settlor's children, the share created for that child shall be divided into as many equal sub-shares as are equal to the number of children of such deceased child who are then living and the number of children of such deceased child who are deceased leaving issue then surviving.

Article V, paragraph 5.01.A provides that the trustee shall pay to, or for the benefit of, Settlor's children and/or Settlor's grandchildren and the descendants of any deceased grandchild, such parts of the income and principal of each share and sub-share as the trustee deems advisable, in the trustee's absolute discretion, for their health, maintenance, support and education until each share and sub-share is distributed by way of final distribution. All income shall be distributed not less frequently than quarter-annually to each beneficiary who is twenty-one years of age, except that if the trustee so elects, any portion or all of the net income otherwise distributable may be retained by the trustee and added to principal. Such parts of the principal of such share may be paid to the child and the child's children and the descendants of the child's deceased children, in the trustee's absolute discretion, for the uses and purposes set forth above.

Article V, paragraph 5.01.B provides that upon the death of any child of the Settlers', the trustee shall distribute and pay the principal of each sub-share created for each grandchild of Settlers' from the share of such deceased child as follows: one-third of the value of such grandchild's sub-share at the age of twenty-five years; one-half of the value of the balance of such grandchild's sub-share at the age of thirty years; and the balance of such grandchild's sub-share at the age of thirty-five years.

Article V, paragraph 5.01.C provides that in the event a sub-share is created for the issue of any deceased grandchild of Settlers', or in the event any grandchild of Settlers' dies before receiving all of the assets of his or her respective sub-share leaving issue then surviving, the trustee shall pay and distribute the sub-share of such deceased grandchild of Settlers' to the issue of such deceased grandchild, per stirpes.

On Date 2, Taxpayer 2 established Trust B, an irrevocable trust for the benefit of her children and more remote descendants.

The preamble of Trust B provides that during Taxpayer 2's life, the principal shall be held as a single trust divided into five separate equal shares, one for each of Taxpayer 2's children.

Article I, paragraph 1.01 of the trust provides that after the expiration of the Initial Period, the trustees shall divide the initial trust estate into five separate equal trusts, one to be held for each of Taxpayer 2's children.

Article I, paragraph 1.02(a) provides that the trustees shall pay to the primary beneficiary of a trust, at least annually, such amounts of the net income and principal as the trustees deem proper for his or her needs. Each trust held for a child shall be held for such child's life.

Article I, paragraph 1.02(b) provides that any trust income not distributed under Article I, paragraph 1.02(a) may be distributed to or for the benefit of the primary beneficiary's lineal descendants as the trustees deem proper. The trustees may also distribute such amounts of principal to or for the benefit of such lineal descendants as the trustees deem proper for the welfare of each.

Article I, paragraph 1.02(d) provides that upon the death of a primary beneficiary, the primary beneficiary may appoint his or her trust to or for the benefit of any of Taxpayer 2's lineal descendants (but not to or for the benefit of such beneficiary or their estate or their creditors) and their spouses (including such beneficiary's spouse); provided that: (i) any trust property appointed in favor of spouses of Taxpayer 2's lineal descendants shall not exceed one-half of the deceased primary beneficiary's trust in the aggregate, and shall be appointed in trust for the life of each spouse; (ii) any trust appointed to Taxpayer 2's lineal descendants shall remain in this trust until he or she

reaches age 30; and (iii) the instrument by which the primary beneficiary appoints his or her trust shall be executed with the same formalities of a will and shall contain an express reference to the limited power of appointment.

Article I, paragraph 1.02(e) provides that upon the death of a primary beneficiary, any part of such primary beneficiary's trust which he or she does not effectively appoint shall be divided among and held in separate trusts under this paragraph for the following persons as primary beneficiaries: (i) for his or her lineal descendants, per stirpes; or (ii) if a deceased primary beneficiary leaves no living lineal descendant, for Taxpayer 2's lineal descendants, per stirpes.

In Year 1, Taxpayer 1 and Taxpayer 2 each transferred \$a to Trust A. In Year 2, Taxpayer 1 and Taxpayer 2 each transferred \$b to Trust A. In Year 3, Taxpayer 2 transferred \$c to Trust B. In Year 4, Taxpayer 1 and Taxpayer 2 each transferred \$a to Trust A. In Year 5 and Year 6, Taxpayer 1 and Taxpayer 2 each transferred \$d to Trust A. In Year 7 and Year 8, Taxpayer 1 and Taxpayer 2 each transferred \$a to Trust A. In Year 9, Taxpayer 1 transferred \$e to Trust A.

Taxpayer 1 and Taxpayer 2 relied on their long-time accountant, Accountant, to prepare their Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax returns") for Years 1 through 9. On each of the gift tax returns and amended gift tax returns filed by Taxpayer 1 and Taxpayer 2 for Years 1 through 9, Taxpayer 1 and Taxpayer 2 each elected under § 2513 to treat the gifts made by them to third parties during the calendar year as made one-half by each of them.

Taxpayer 1's and Taxpayer 2's Year 1 transfers to Trust A were reported on amended Year 1 gift tax returns. No allocation of Taxpayer 1's or Taxpayer 2's GST exemption was made on the Year 1 amended gift tax returns.

Taxpayer 1's and Taxpayer 2's Year 2 transfers to Trust A were reported on Year 2 gift tax returns, however, no allocation of their GST exemptions was made. In Date 3, Taxpayer 1 and Taxpayer 2 each filed amended Year 2 gift tax returns for purposes of making a late allocation of their respective GST exemptions for transfers made to Trust A in Year 1. In preparing Taxpayer 1's and Taxpayer 2's amended Year 2 gift tax returns, Accountant mistakenly believed that a portion of the transfers to Trust A benefitting the grandchildren of Taxpayer 1 and Taxpayer 2 was exempt from the GST tax and, accordingly, allocated an insufficient amount of each taxpayer's GST exemption.

Taxpayer 2's Year 3 transfer to Trust B was reported on Taxpayer 2's Year 3 gift tax return. Taxpayer 1 also filed a Year 3 gift tax return and, pursuant to the taxpayers' election under § 2513, Taxpayer 1 reported one-half the value of Taxpayer 2's Year 3

transfers, along with his other Year 3 transfers. No allocation of Taxpayer 1's or Taxpayer 2's GST exemption was made with respect to the Year 3 transfer to Trust B.

Taxpayer 1's and Taxpayer 2's Year 4 transfers to Trust A were reported on Year 4 gift tax returns, however, as discussed above, Accountant mistakenly allocated an insufficient amount of each taxpayers' GST exemption.

Taxpayer 1's and Taxpayer 2's Year 5 transfers to Trust A were reported on Year 5 gift tax returns, however, Accountant mistakenly allocated an insufficient amount of each taxpayers' GST exemption.

Taxpayer 1's and Taxpayer 2's Year 6 transfers to Trust A were reported on Year 6 gift tax returns, however, Accountant mistakenly allocated an insufficient amount of each taxpayers' GST exemption.

Taxpayer 1's and Taxpayer 2's Year 7 transfers to Trust A were reported on Year 7 gift tax returns, however, Accountant mistakenly allocated an insufficient amount of each taxpayers' GST exemption.

Taxpayer 1's and Taxpayer 2's Year 8 transfers to Trust A were reported on Year 8 gift tax returns, however, Accountant mistakenly allocated an insufficient amount of each taxpayers' GST exemption.

Taxpayer 1's Year 9 transfer to Trust A was reported on Taxpayer 1's Year 9 gift tax return. Taxpayer 2 also filed a Year 9 gift tax return and, pursuant to the taxpayers' election under § 2513, Taxpayer 2 reported one-half the value of Taxpayer 1's Year 9 transfers. No allocation of Taxpayer 1's or Taxpayer 2's GST exemption was made with respect to the Year 9 transfer to Trust A.

Taxpayer 1 and Taxpayer 2 have requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1's and Taxpayer 2's respective GST exemptions with respect to the transfers to Trust A in Year 1, Year 2, and Years 4 through 9, and the transfer to Trust B in Year 3; (2) that the allocations will be effective as of the respective dates of the transfers to Trust A and Trust B; and (3) that the allocations shall be made based on the value of the property transferred to Trust A and Trust B as of the respective dates of the original transfers.

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 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)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

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, 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 into law on June 7, 2001.

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, Taxpayer 1 and Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer 1's and Taxpayer 2's available GST exemptions, with respect to the transfers to Trust A and Trust B. The allocations will be effective as of the dates of the transfers to the trusts, and the gift tax values of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts.

These allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental 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 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 Trust A and Trust B or whether the property transferred is eligible for the gift tax annual exclusion under § 2503(b).

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer 1 and Taxpayer 2.

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)