

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-110923-04

Date:

June 29, 2004

Legend

Taxpayer =

Spouse =

Trust 1 =

Date 1 =

v =

Partnership =

Date 2 =

w =

Date 3 =

x =

Year 1 =

Date 4 =

y =

Law Firm =

Date 5 =

z =

Year 2 =

Dear Sir:

This is in response to your letter dated January 27, 2004, 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 an allocation of Taxpayer's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Taxpayer created Trust 1 on Date 1. Date 1 is a date after September 25, 1985. Taxpayer transferred a y percent interest in Partnership on Date 1 to Trust 1. On Date 2, Taxpayer transferred \$w in cash to Trust 1. On Date 3, Taxpayer transferred \$x in cash to Trust 1. Date 1, Date 2, and Date 3 are all in Year 1.

Article First of the Trust 1 Agreement provides in relevant part that income shall be paid and principal may be paid to any one or more of the members of a class composed of the children of Taxpayer and their issue living at the time of the distribution in whatever proportions and amounts the trustees in their absolute discretion shall determine. Trust 1 shall terminate on the later of (i) the date of death or twenty-eighth birthday of the child of Taxpayer whose death or twenty-eighth birthday leaves no other child of Taxpayer then living under the age of twenty-eight years and (ii) the date of death of the survivor of Taxpayer and Spouse.

Taxpayer and Spouse each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return (gift tax return), for Year 1 on Date 4. On the gift tax returns, the Partnership interest transferred was valued at \$y and Taxpayer and Spouse elected to split gifts under § 2513. None of Taxpayer's GST exemption was allocated to the transfers to Trust 1 on the Year 1 gift tax return.

Taxpayer relied upon representatives of Law Firm to prepare his gift tax return for Year 1. Representatives at Law Firm inadvertently failed to allocate GST exemption to the Year 1 transfers to Trust 1.

On Date 5, Taxpayer and Spouse filed amended gift tax returns for Year 1 in order to revalue the Partnership interest at \$z. None of Taxpayer's GST exemption was allocated to Trust 1 on the amended gift tax return.

Taxpayer has requested an extension of time to allocate GST exemption to his portion of the gifts made during Year 1 to Trust 1.

Section 2513(a)(1) of the Internal Revenue Code 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 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 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 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, 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 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, 2001-2 C.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 GST 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in 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.

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 election 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 to 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 is granted an extension of time of 60 days from the date of this letter to file a supplemental Form 709 for the Year 1 transfers to Trust 1. The Form 709 should include a Notice of Allocation properly allocating Taxpayer's GST exemption to the Year 1 transfers. The allocations will be effective as of the date of the transfer, and the gift tax value of the transfers to Trust 1 will be used in determining the amount of GST exemption to be allocated to the trusts. The inclusion ratio for Trust 1 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. A copy is included for this purpose.

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. We are specifically not ruling on the gift tax value of the transfer of Partnership interests to Trust 1.

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 the taxpayers' 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 of this Letter

Copy of this Letter for § 6110 purposes