

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200817011**

Release Date: 4/25/2008

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-133253-07

Date:
December 11, 2007

Legend

- Grantor =
- Spouse =
- Son 1 =
- Son 2 =
- Accountant =
- Trust 1 =
- Trust 2 =
- Company =
- Company 1 =
- Company 2 =
- LP =
- Year 1 =
- Date 1 =
- Date 2 =
- Date 3 =
- a =
- b =

Dear :

This is in response to your letter dated December 21, 2006, 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 Grantor's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date 1, Grantor established Trust 1 for the benefit of Son 1 and Trust 2 for the benefit of Son 2.

Article FIRST, Section A, of each trust provides, in part, that during Grantor's life, the trustee has discretion to pay or apply so much or all of the net income, if any, and principal of the trust to or for a charitable organization, a non-profit organization selected by Spouse, the named beneficiary, the named beneficiary's descendants, and trusts for the primary benefit of any of the above beneficiaries. If during Grantor's life, the named beneficiary and the named beneficiary's descendants are not living, then Grantor's descendants are also permissible beneficiaries.

Article FIRST, Section B, provides that upon 90 days after Grantor's death, the trustees are to distribute to the Grantor's estate any property includible in Grantor's gross estate for federal estate tax purposes (other than property bequeathed to the trustees under the Grantor's will). The balance of each Trust's property (including any received by the Trustees pursuant to the provisions of the Grantor's will) is directed to be held in further trust upon the same terms described above, for the same beneficiaries.

Article FIRST, Section C, Paragraph 1 provides that the trustee may not transfer, pay over or distribute to any person any portion of either an interest in a Company Entity or an interest in LP (a limited partnership) or any successor to LP at any time when LP or its successor holds a direct or indirect interest in a Company Entity without the prior written consent of the Company Entity. Company Entity is defined as (a) Company 1, (b) Company 2, or (c) any entity that holds a direct or indirect majority interest in Company 1, Company 2, or any successor to Company 1 or Company 2.

Article FIRST, Section C, Paragraph 2 provides that the trustee shall hold each interest in a Company Entity or interest in LP that would have been transferred, paid over or distributed to any person or entity in trust for the benefit of that beneficiary. The trustee shall transfer, pay over and distribute to such beneficiary (a) any income or principal of the trust that does not consist of an interest in a Company Entity or an interest in LP and that shall not be required for expenses of administration, and (b) any interest in a Company Entity or interest in LP as to which such Company Entity has provided consent. The trust under this paragraph shall terminate when Paragraph 1 of this section shall no longer prohibit the distribution to such beneficiary of any of the assets held in the trust (whether by reason of consent of the Company Entity to the distribution, or because the trustee no longer holds any Company Entity interest or any LP interest or otherwise), whereupon the trustee shall transfer, pay over and distribute all of the then undistributed net income and principal of the trust of such beneficiary, or to such beneficiary's estate (or successor) upon an individual beneficiary's death (or termination of an entity beneficiary) prior to such payment in full.

Article SECOND, Section A provides that the trustee shall hold any property directed to be disposed of pursuant to the provisions of this Article, in Trust, shall manage, invest and reinvest the same, shall collect the income therefrom and the trustee may, at any time, and subject to Article First, Section C, pay or apply so much or all of the net income therefrom and the principal thereof to or to the use of such one or more beneficiaries in such amounts and proportions as the trustee shall determine in the trustee's sole discretion, accumulating any net income not so paid or applied and adding the same to principal.

Article SECOND, Section B provides that the settlor directs the trustee to consider the trust under this Article as a family asset and to be liberal in the exercise of the discretion conferred upon the trustee and to use the principal of such trust, even to the entire amount thereof, but subject to Article First, Section C, to meet the needs of the beneficiaries, including without limitation, to provide for their education, to purchase or provide a home for any of them and to aid them at the time of marriage, or in setting up a business, rather than to preserve such principal for the benefit of the persons entitled thereto at the termination thereof.

Article FOURTH, Section A provides that the trustee may at any time in the trustee's discretion terminate any trust under this agreement if in the trustee's judgment it would be inadvisable to continue to hold it in trust; provided, however, that in no event may the trustee terminate any such trust at a time when it is a limited partner or member of any Company Entity or any LP Entity or is otherwise a holder or beneficial owner of any interest in a Company Entity or LP. Upon such termination, the trustee shall transfer, pay over and distribute the then principal of any such trust either to the person eligible to receive the income of such trust, or if there is more than one such person, among the persons eligible to receive the income of such trust, in such amounts and proportions as the trustee shall determine in his sole discretion.

On Date 2, in Year 1, Grantor transferred \$a in cash and a limited partnership interest in LP valued at \$b to each trust (Trust 1 and Trust 2). Grantor and Spouse (the Taxpayers) each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return (gift tax return) for Year 1. Grantor and Spouse elected to treat the gifts as made one-half by each spouse under § 2513.

Grantor hired Accountant to prepare the gift tax returns. Both gift tax returns were timely filed. However, Accountant failed to allocate Grantor's GST exemption to the trusts. Accountant also failed to allocate Spouse's GST exemption to the trusts. Accountant did not discuss this with Grantor, Spouse or their advisors.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Grantor's and Spouse's GST exemption under § 2632 to Grantor's and Spouse's transfers to Trust 1 and Trust 2 in Year 1.

Section 2501 imposes a tax on the transfer of property by gift by an individual, resident or nonresident. Section 2513(a) provides, generally, that, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST), as defined in §§ 2611 through 2613, made after October 26, 1986, by a "transferor" to a "skip person."

Under § 2652(a)(1) and § 26.2652-1(a)(1), generally, the transferor for purposes of the GST tax is the individual with respect to whom the property was last subject to federal estate or gift tax. Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Under § 2602, the amount of the tax imposed under § 2601 is equal to the taxable amount multiplied by the applicable rate. Section 2641(a) provides that the "applicable rate" with respect to any generation-skipping transfer, is the product of the maximum federal estate tax rate multiplied by the inclusion ratio with respect to the transfer. Under § 2642(a)(1), in general, the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess of one over the applicable fraction determined for the trust from which the transfer is made. Under § 2642(a)(2), the applicable fraction is a fraction, the numerator of which is the amount of GST exemption allocated to the trust, and the denominator of which is the value of the property transferred to the trust, with certain specified adjustments.

Section 2631(a), as in effect for the years at issue in the present case, provided 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)(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)(A) 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.

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. See Notice 2001-50, 2001-2 C.B. 189.

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 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, Grantor is granted an extension of time of 60 days from the date of this letter to make an allocation of Grantor's available GST exemption, with respect to Grantor's Year 1 transfers to Trust 1 and Trust 2. In addition, Spouse is granted an extension of time of 60 days from the date of this letter to make an allocation of Spouse's available GST exemption, with respect to Spouse's Year 1 transfers to Trust 1 and Trust 2. The allocations will be effective as of Date 2, and the inclusion ratio of Trust 1 and Trust 2 will be determined based on the value of the transfers to the trusts as determined for federal gift tax purposes and the amount of exemption allocated to the trusts.

Grantor and Spouse should make these allocations on supplemental Forms 709 for Year 1. The forms should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
Passthroughs & Special Industries

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: