

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-151188-07
Date:
May 07, 2008

Legend

Taxpayer	=
Wife	=
Child A	=
Child B	=
C	=
D	=
Trust	=
Company 1	=
Company 2	=
X%	=
Y%	=
\$Z	=
Trustees	=

Attorney 1	=
Accountant	=
Attorney 2	=
Date 1	=
Year 1	=
Year 2	=

Dear :

This is in response to a letter from your authorized representative dated March 26, 2008, and prior correspondence, requesting an extension of time under § 301.9100

of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an allocation of your generation-skipping transfer (GST) tax exemption.

Facts

The facts and representations submitted are summarized as follows:

Taxpayer (Husband) established Trust on Date 1, in Year 1. Trust was created for the benefit of Child A and Child B and their descendants. Trust was funded with Husband's entire limited partnership interest (X%) in Company 1 and Husband's entire limited partnership interest (Y%) in Company 2. It is represented that no additional transfers have been made to Trust since its creation, and no distributions have been made from Trust which would be subject to the GST tax.

Article Second of Trust provides, in part, that until the Termination Date, Trustees may pay or apply so much (or all or none) of the net income of the Trust to or for the use or benefit of any one or more persons comprising a class consisting of Husband's children and more remote issue from time to time living, in such amounts and proportions, whether equal or unequal, to the exclusion of any other member of such class and whether the whole thereof or a lesser amount, as the Trustees (other than a beneficiary of the Trust) in their discretion, shall from time to time determine, and to accumulate the balance of the net income, if any, and to add such accumulated income to the principal of the Trust at the end of each Trust year.

Article Second further provides that the Trustees may at any time or from time to time, pay or apply the principal of the Trust to or for the use and benefit of any permissible income beneficiary, from time to time then living, in such amounts and proportions, whether equal or unequal, as the Trustees (other than a beneficiary of the Trust), in their discretion, shall from time to time determine for any such beneficiary's best interest. As each grandchild and more remote issue of Husband attains age 25, the Trustees shall distribute \$Z to that beneficiary.

The Termination Date of Trust is the earlier of 100 years from the date of its creation or 21 years after the death of the last person to die of a class consisting of Husband's issue and the issue of C and D who were living on the date of the creation of the Trust.

Husband and Wife engaged the services of Attorney 1 to assist them with the creation and funding of the Trust. On the advice of Attorney 1, Husband and Wife decided to split the gift to the Trust and to allocate sufficient GST exemptions to the Trust so that Trust would have a zero inclusion ratio. Husband and Wife hired Accountant to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Year 1. They told Accountant of their intention to allocate

their GST exemptions to the Trust. Accountant prepared the returns but failed to make the allocations.

The gift tax returns for Husband and Wife for Year 1 were examined by the Internal Revenue Service. As a result of the examinations, adjustments were proposed to the value of the assets transferred to the Trust in Year 1. The proposed adjustments resulted in an increase in the value of the assets transferred. Husband and Wife consented to the increase and paid the resulting additional gift tax liability and interest in Year 2.

Subsequent to Year 1, Husband and Wife engaged the services of Attorney 2. In his review of the gift tax returns filed by Husband and Wife for Year 1, Attorney 2 discovered that no GST exemptions had been allocated to the transfers to the Trust in Year 1.

You have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate you GST exemption to the transfers to Trust in Year 1, using the gift tax values (as adjusted) of those transfers in determining the amount of GST exemption to be allocated.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer (GST). A generation-skipping transfer 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction.” The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect for the tax year at issue, 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 26.2632-1(b)(4) 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.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return, the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes, and 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)(A), which was enacted into law on June 17, 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, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute, and that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) 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 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 prescribed 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, Husband is granted an extension of time of 60 days from the date of this letter to make an allocation of his available GST exemption, with respect to his transfer to Trust in Year 1. The allocation will be effective as of the date of the transfer, and the value of the transfer as determined for federal gift tax purposes will be used in determining the amount of Husband's exemption to be allocated to the Trust.

The allocation should be made on a supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is included 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.

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 and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: