

Internal Revenue Service

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B09 – PLR-162652-03

Date:

November 29, 2004

Legend

Taxpayer =

Spouse =

Trust =

Year 1 =

x =

y =

Dear

This is in response to your letter dated November 18, 2004, and prior correspondence, requesting a ruling regarding the application of § 2632 of the Internal Revenue Code to Trust.

The facts and representations submitted are summarized as follows: Taxpayer and Spouse created Trust in Year 1. Taxpayer and Spouse each contributed \$x to Trust in Year 1 for a total of \$y.

Paragraph 2.2 of the Trust agreement provides that the initial trust shall be divided into three shares, one for the benefit of each of Taxpayer and Spouse's sons. Paragraph 2.3.1 provides that the trustee shall distribute the net income derived from a son's trust at least quarterly to or for such son's benefit for his lifetime. Paragraph 2.3.2 provides that the trustees have the discretion to distribute principal to a son for expenses of accident or illness if needed. Paragraph 2.3.3 provides that each son shall have the limited testamentary power to appoint the principal of the trust for the benefit of one or more of the group consisting of descendants of Taxpayer and Spouse.

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Paragraph 2.3.4 provides that upon a son's death, the trustee shall divide any part of the son's trust that was not effectively appointed into shares for the deceased son's then living descendants on the principle of representation. Paragraph 2.4.6 provides that the trustee shall distribute the entire principal of all trusts no later than twenty-one years after the date of the death of the last to die of Taxpayer and Spouse and their descendants who were living on the establishment of Trust.

Paragraph 4.27 of the Trust agreement provides, in relevant part, that a material purpose of this trust is to utilize the available exemption from the generation-skipping transfer tax. Paragraph 6.5 provides that the initial contribution transferred to the trust by Taxpayer and Spouse shall constitute separate trusts for the sons, which shall be called collectively the exempt share. Any additional transfers to this trust shall be held in separate trusts, which shall be called collectively the non-exempt share. Discretionary distributions of principal from a trust shall be charged first against the non-exempt share until it is exhausted and thereafter against the exempt share. Distributions of principal or income to skip persons may be made from the exempt or non-exempt shares as the trustee, in his absolute discretion, determines will best minimize the taxes imposed.

Taxpayer reported the transfer to Trust in Year 1 on a timely-filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return (gift tax return). No entries were made on Schedule C of Taxpayer's gift tax return, however, the Trust agreement was attached to the return.

You represent that the Year 1 transfers are the only transfers that have been made to the Trust as of the date of this letter. There have been no distributions of principal from Trust.

You have requested a ruling that Taxpayer substantially complied with the requirements of making a timely allocation of GST exemption to Trust with respect to the gift tax return filed for Year 1.

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

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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) of the Generation-Skipping Transfer Tax Regulations provides in relevant part that, except as provided in § 26.2642-3 (relating to charitable lead annuity trusts), 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.

In this case, Taxpayer did not comply with the instructions on Form 709 in that Schedule C of the gift tax return was left blank. However, literal compliance with the procedural instructions to make an election is not always required. See Hewlett Packard Co. v. Commissioner, 67 T.C. 736 (1977), acq. in result, 1979-1 C.B. 1. Thus, an allocation that does not strictly comply with the instructions on Form 709, or the applicable regulations, will be deemed valid if the information on the return is sufficient to indicate that the taxpayer intended to make an allocation of GST exemption.

In this case, a copy of the Trust agreement was attached to the gift tax return. Paragraph 4.27 specifically states that a material purpose of this trust is to utilize the available exemption from the generation-skipping transfer tax. Based solely on the facts submitted and the representations made, we conclude that the Trust agreement attached to the federal gift tax return contains sufficient information to constitute substantial compliance with the requirements for making a timely allocation of $\$x$ of Taxpayer's GST exemption to Trust. The allocation to Trust did not utilize Taxpayer's entire GST exemption. Any subsequent allocations of Taxpayer's GST exemption in excess of Taxpayer's remaining GST exemption are void under § 26.2632-1(b)(2).

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.

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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,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 9
(Passthroughs & Special Industries)

Enclosures

Copy of this Letter for § 6110 purposes

cc: