

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200426003**

Release Date: 6/25/04

Index Number: 2642.-01-00, 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-111818-03

Date: FEBRUARY 17, 2004

Re:

Legend:

| | |
|---------------|---|
| Year 1 | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Grantor | = |
| Spouse | = |
| Attorney | = |
| Bank | = |
| Trust Officer | = |
| Trust 1 | = |
| Trust 2 | = |
| Trust 3 | = |
| Child 1 | = |
| Child 2 | = |
| Child 3 | = |
| \$X | = |

Dear :

This is in response to your letter dated February 11, 2003 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 the Generation-Skipping Transfer (GST) exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: On Date 1, Grantor and Spouse established three irrevocable trusts (Trust 1, Trust 2, and Trust 3) for the benefit of Child1, Child 2, Child 3 and their spouses and descendants. Bank and the child for whom the trust was created are the trustees of each trust. Grantor and Spouse each transferred securities valued at \$X to Trust 1, Trust 2 and Trust 3. Grantor and Spouse consented to split the gifts and signified so on their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

Trust 1, Trust 2, and Trust 3 have identical provisions. Section 2 of Trusts provides, generally, that during the life of the primary beneficiary, the trustees will pay to such beneficiary all the net income and so much, if any, of the principal as the corporate trustee determines to be necessary for her/his support, maintenance and medical care, having regard to his accustomed standard of living, income and other resources, whether in trust or otherwise. The beneficiary has the power to require the trustees to distribute to her/him the value of the greater of \$5,000 or 5% of the principal of the trust estate in each calendar year. If the power is not exercised, it lapses.

Section 3 provides that upon the death of the primary beneficiary, the trustee will pay to the primary beneficiary's spouse, if married to the primary beneficiary at the date of death, and continue paying as long as beneficiary's spouse is unmarried, and to her/his living issue from time to time, so much of the net income, and so much, if any, of the principal as the corporate trustee determines to be necessary for their health, support, maintenance, medical care, and education, having regard to their accustomed standard of living, income and other resources, without the need of equality among them. Any income not paid will be added to principal.

Section 3 further provides that upon the death or remarriage of the spouse of the primary beneficiary, or immediately upon the death of the primary beneficiary, if Spouse predeceases the primary beneficiary, the trustees will pay to the issue of the primary beneficiary so much of the net income and so much, if any, of the principal as the corporate trustee determines to be necessary for their support, maintenance, medical care, and education, having regard to their accustomed standard of living, income and other resources, without the need of equality among them. Any income not paid will be added to principal. When the youngest living child of the primary beneficiary attains age 21 (or in the event all of the primary beneficiary's children die before attaining 21 and leave issue surviving them), the trustees will divide and set aside the entire trust estate into such number of shares (which shares shall be equal if more than one) as will provide a share for each living child of the primary beneficiary and a share for the then living issue, collectively, of any child of the primary beneficiary who is then dead leaving living issue.

Section 4 provides, generally, that in the case of a share set aside for the child of a primary beneficiary, the trustees will pay all the net income to the child and so much of

the principal as the corporate trustee determines to be necessary for the child's support, maintenance, medical care and education, having regard for their accustomed standard of living, income and other resources, whether in trust or otherwise. When the child attains the age of 35, the trust will terminate and the entire trust will be paid over to the child. If the child dies before attaining age 35, the entire trust estate will be paid over to child's estate.

Section 5 provides that any share set aside for the then living issue of any child of the primary beneficiary who is then dead will be paid over to such issue per stirpes.

For years prior to the Year 1 gifts, Grantor and Spouse relied on Attorney to advise them on tax matters including gift tax matters. On Date 2, Trust Officer, at the request of Grantor and Spouse, wrote to Attorney and advised him of the Year 1 gifts to Trusts 1, 2, and 3, and requested that Attorney prepare Grantor and Spouse's Year 1 Forms 709. The Forms 709 were not filed until Date 3, which is after the time prescribed under § 6075(b) for timely filing such returns. On the Forms 709, Grantor and Spouse elected to split their gifts and allocated their GST Exemption in an amount equal to the value of the gifts for which they were the transferor as of Date 1 (the date of the gifts) rather than Date 3 (the date the Forms 709 were filed). The value of the securities disclosed on the Forms 709 had increased from Date 1 to Date 3, thus, the inclusion ratio of each trust was not zero.

Spouse died on Date 4. Grantor died on Date 5. It is represented that Grantor and Spouse did not make any other gifts subject to the generation-skipping transfer tax. The allocation error was discovered when Grantor's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return was being prepared.

Bank has requested an extension of time under § 2642(g)(1) and § 301.9100-3 to allocate Grantor and Spouse's GST exemption to the Year 1 transfers by Grantor and Spouse to Trust 1, Trust 2, and Trust 3, and that such allocations will be based on the value of the property transferred to the trusts as of Date 1.

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 GST 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 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust (or involved in the 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 2513(a)(1) provides, generally, that a gift made by one spouse to any person other than his 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 § 2513(a)(1) shall apply only if both spouses have signified their consent to the application of § 2513(a)(1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 2652(a)(2) provides that, if under § 2513, one-half of a gift is treated as made by the individual, and one-half of such gift is treated as made by the individual's spouse, then such gift shall be so treated for purposes of chapter 13.

Section 2632(a) 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 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 26.2632-1(b)(2)(ii) provides that, except as otherwise provided, an allocation of GST exemption is effective as of the date of any transfer as to which the Form 709 on which it is made is a timely filed return (a timely allocation). An allocation to a trust made on a Form 709 filed after the due date for reporting a transfer to the trust (a late allocation) is effective on the date the Form 709 is filed. See Example 3 of § 26.2632-1(b)(2)(iii).

Section 2642(b)(1) provides, in part, 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, 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)).

Section 2642(b)(3) provides, in part, that if any allocation of the GST exemption to any property not transferred as a result of the death of the transferor is not made on a gift tax return filed on or before the date prescribed by § 6075(b), the value of such property for purposes of § 2642(a) shall be determined as of the time such allocation is filed with the Secretary, and such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

Section 2642(g)(1)(A) provides 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.

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

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, Bank is granted an extension of time of 60 days from the date of this letter to allocate Grantor and Spouse's GST exemption to the Year 1 transfers for which they were the transferors to Trust 1, Trust 2, and Trust 3. The allocations will be effective as of Date 1, the date of the transfers to the trusts, and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts.

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 taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocation of Grantor and Spouse's GST exemption should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter