

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID #

Telephone Number:

Refer Reply To:

CC:PSI:B09 – PLR-165286-03

Date:

August 19, 2004

Re:

LEGEND

Husband =

Wife =

Date 1 =

Family Trust =

Child 1 =

Child 2 =

Date 2 =

\$a =

Date 3 =

\$b =

Accounting Firm =

Law Firm =

Year 1 =

Year 2 =

Year 3 =

Date 4 =

Year 4 =

\$c =

\$d =

\$e =

\$f =

Dear :

This is in response to your letter dated May 5, 2004, and prior correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Husband's and Wife's generation-skipping transfer (GST) tax exemptions.

The facts and representations submitted are summarized as follows: On Date 1, Husband executed Family Trust, an inter vivos irrevocable trust, for the benefit of Wife, Child 1, Child 2, and the descendants of Child 1 and Child 2.

Article III of Family Trust provides, in part, that during Wife's lifetime the trustee shall hold the trust estate in trust for the use and benefit of Wife, Child 1, and Child 2. Upon Wife's death, the trustee shall apportion the trust estate into equal shares for Child 1 and Child 2, whether then living or deceased. Each share apportioned for Child 1 or Child 2, or the lineal descendants of a deceased child, shall be held as a separate trust. The trustee shall then apportion each child's trust into two separate shares so that after the division and the allocation of GST exemption, one share will have an inclusion ratio of one for GST tax purposes, and the other share will have an inclusion ratio of zero for GST tax purposes. The share set aside for each child that has an inclusion ratio of one shall be referred to as such child's Non-Exempt share. The share set aside for each child that has an inclusion ratio of zero shall be referred to as such child's GST Exempt share.

Article IX provides, in part, that the premiums or other charges on unmatured policies of insurance constituting a part of the trust estate shall be paid by the trustee.

Article X, paragraph 2 provides, in part, that with respect to any additions made to Family Trust, Wife shall have the noncumulative yearly right to appoint to herself the amount of the addition, but in no event shall the amount appointed to Wife be greater

than \$5,000. In addition, Child 1, Child 2, and any other lineal descendants of Husband who are beneficiaries of the trust estate shall have the noncumulative yearly right to appoint to himself or herself the amount of such addition, but in no event shall the amount appointed be greater than \$10,000 per beneficiary; provided, however, that the limit on the annual amount each such beneficiary can appoint from the additions can be increased as follows: if in one calendar year more than one individual shall make an addition to the trust estate, then each beneficiary may annually appoint to himself or herself up to \$10,000 from the additions made by each individual donor.

On or about Date 2, the trustees of Family Trust purchased a life insurance policy on the life of Husband in the face amount of \$a. From Date 2 to Date 3, a period of approximately 45 months, Husband contributed cash in the amount of \$b per month to the trustees of Family Trust to cover the premium payments on the life insurance policy held by the trust.

Husband and Wife retained Accounting Firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1 and Year 2. The returns reported the transfers to Family Trust and reflected Husband's and Wife's intention to treat the transfers as being made one-half by each pursuant to § 2513. However, in preparing the returns, Accounting Firm inadvertently failed to allocate any of Husband's or Wife's GST exemptions to the Year 1 or Year 2 transfers.

In Year 3, Law Firm discovered that no GST exemption had been allocated to Family Trust and advised Husband and Wife to make late allocations of Husband's and Wife's GST exemptions to Family Trust as part of their Year 3 gift tax returns. The Year 3 returns, which were prepared by Law Firm, reported the transfers to Family Trust and reflected Husband's and Wife's intention to treat the transfers as being made one-half by each pursuant to § 2513. In preparing the returns, however, Law Firm inadvertently attributed the entire value of the trust to Husband and allocated an amount of Husband's GST exemption to cover the entire value of Family Trust.

Husband died on Date 4 survived by Wife. Because Wife believed that the Year 3 allocations to Family Trust exempted the trust from GST tax, no gift tax returns were filed for Year 4.

Wife and the executors of Husband's estate now request that an extension of time be granted under § 2642(g) and § 301.9100-3 to make allocations of Husband's and Wife's respective GST exemptions to the Year 1, Year 2, Year 3, and Year 4 transfers to Family Trust, effective as of the dates of the original transfers.

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 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. Section 2642(a) provides the method for determining the inclusion ratio.

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)) that 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 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, United States Gift (and Generation-Skipping Transfer) Tax Return. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain a zero inclusion ratio with respect to the trust.

Section 2642(a)(1) provides that the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over – (A) the applicable fraction determined for the trust from which such transfer is made, or (B) in the case of a direct skip, the applicable fraction determined for such skip.

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 determining the inclusion ratio shall be its value for purposes of chapter 12 (within the meaning of § 2001(f)(2)), 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).

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 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 generation-skipping 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 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. 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, we grant an extension of time of 60 days from the date of this letter for Husband's estate to make allocations of Husband's GST exemption as follows: \$c to the Year 1 transfers to Family Trust, \$c to the Year 2 transfers to Family Trust, \$c to the Year 3 transfers to Family Trust, and \$d to the Year 4 transfers to Family Trust. In addition, we grant an extension of time of 60 days from the date of this letter for Wife to make allocations of her GST exemption as follows: \$e to the Year 1 transfers to Family Trust, \$e to the Year 2 transfers to Family Trust, \$e to the Year 3 transfers to Family Trust, and \$f to the Year 4 transfers to Family Trust. The allocations will be effective as of the dates of the

transfers to Family Trust, and the gift tax values of the transfers will be used in determining the amount of GST exemption to be allocated to each transfer.

The allocations of Husband's and Wife's GST exemptions to the Year 1, Year 2, and Year 3 transfers should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each supplemental Form 709. Copies are enclosed for this purpose.

The allocations of Husband's and Wife's GST exemptions to the Year 4 transfers should be made on Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each Form 709. Copies are enclosed for this purpose.

Assuming that Wife and Husband's estate allocate their GST exemptions to the Year 1, Year 2, Year 3, and Year 4 transfers to Family Trust pursuant to the relief granted herein, those allocations will be deemed timely. Accordingly, the late allocation of Husband's GST exemption made on his Year 3 gift tax return is invalid.

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. In addition, we express or imply no opinion regarding the value of the property transferred to Family Trust.

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.

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

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.

Sincerely,

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

Enclosures

Copy of letter
Copy for 6110 purposes