

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PSI:B09 / PLR-101753-04

Date:
March 09, 2004

In Re:

Legend

Decedent =

Trust A =

Date 1 =

Trust B =

Date 2 =

X =

Y =

Year 1 =

Date 3 =

Dear _____ :

This is in response to your letter dated December 30, 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 Taxpayer's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: Decedent created Trust A on Date 1. Trust A is an irrevocable trust for the primary benefit of Decedent's daughter and her descendants. Decedent created Trust B on Date 2. Trust B is an irrevocable trust for the primary benefit of Decedent's son and his descendants. The dispositive provisions of the trusts are identical, with only the

intended beneficiaries and the identity of the second trustee differing. Each of the trusts was funded in Year 1 with \$x in cash and bonds valued at \$y.

Article Second of each trust agreement provides that Decedent intends that each trust, to the maximum permissible degree, shall be exempt from the federal generation-skipping transfer tax because of allocations made under § 2631 of the Internal Revenue Code.

Article Third(A) of each trust agreement provides that the trust is held for the benefit of the named beneficiary and directs the trustees to pay the net income to the named beneficiary in quarterly or more frequent installments. Article Third(B) provides for discretionary distributions of principal to the named beneficiary by any trustee who is not a descendant of Decedent.

Article Third(C) of each trust agreement provides that upon the death of the named beneficiary, the trustees shall distribute the assets among a class consisting of Decedent's issue (other than the named beneficiary) and the spouses of the issue (including the named beneficiary's spouse) in such proportions and manner as the named beneficiary appoints in his or her last will and testament. If the named beneficiary does not exercise the limited power of appointment, the trust property shall be held in trust for the named beneficiary's spouse, if then living. Article Third(D) provides that on the death of the survivor of the named beneficiary and the named beneficiary's spouse, the trust property shall be divided into shares for the then living issue of the named beneficiary, per stirpes.

Potential beneficiaries include individuals who are two or more generations below the grantors' generation, therefore, distributions from Trusts A and B may be subject to the GST tax.

Decedent reported the transfer to Trust A and Trust B on a timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1. The gift tax return was prepared by a certified public accountant on whom the Decedent relied to advise her on tax matters for many years. The transfers were reported on the gift tax return and copies of the trust agreements were attached to the return. The accountant, however, inadvertently failed to allocate Decedent's available GST exemption to the transfers.

Decedent died on Date 3. The failure to allocate Decedent's available GST exemption to the Year 1 transfers to Trust A and Trust B was discovered by Decedent's estate planning attorney during the administration of Decedent's estate.

The personal representative for Decedent's estate has requested an extension of time to make allocations of her GST tax exemption under § 2642(g) with respect to the assets transferred to Trust A and Trust B in Year 1. In addition, Taxpayer requests that

the allocation be based on the value of the assets transferred to the trusts, as of the original transfers so that each trust has an inclusion ratio of zero.

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 tax 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 tax 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) provides that, except as provided in § 2642(f), if the allocation of the GST tax 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, on and after the close of such 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 tax 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.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST tax 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 GST 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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 to 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, Decedent's estate is granted an extension of time of 60 days from the date of this letter to file a supplemental Form 709 for the Year 1 transfers to Trust A and Trust B. The Form 709 should include a Notice of Allocation properly allocating Taxpayer's GST exemption to the Year 1 transfers. The allocations will be effective as of the date of the transfer, and the gift tax value of the transfers to Trust A and Trust B will be used in determining the amount of GST tax exemption to be allocated to the trusts. The inclusion ratios for Trust A and Trust B will be determined under §§ 2642(a) and 2642(b). Because the amount of decedent's remaining GST exemption at the time of the Year 1 transfers exceeded the amount of the transfers to Trust A and Trust B, each trust will have an inclusion ratio of zero for GST tax purposes. A copy of this letter should be attached to the supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is included for this purpose.

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. We are specifically not ruling on the gift tax value of the transfers to Trust A and Trust B.

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.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to the taxpayers' representative.

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.

Sincerely,

Heather C. Maloy

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

Enclosures (2)

cc: