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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-126575-03

Date:
January 29, 2004

Re:

Legend

Husband =

Wife =

Trust =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Amount 7 =

Amount 8 =

Amount 9 =

Amount 10 =

Amount 11 =
Attorney =

CPA 1 =
CPA 2 =
CPA 3 =

Dear _____ :

This is in response to a letter from your authorized representative dated April 6, 2003, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption. This letter responds to that request.

The facts and representations submitted are summarized as follows: Husband and Wife reside in a community property state. Husband and Wife (together referred to as Taxpayers) established an irrevocable trust, Trust, under an agreement dated Date 1 for the benefit of their children and grandchildren. Son was named as the initial trustee and continues to serve in that capacity.

Under Trust's terms, the Trustee has the discretion to pay income and principal to the beneficiaries as the Trustee deems necessary for the health, education, maintenance, and support of the beneficiaries. Provided Trust does not terminate as a result of such discretionary distributions, Trust will continue until the death of the last to die of two of Taxpayers' children, or for the maximum period allowed by law. On termination, all principal and income is to be distributed to Taxpayers' grandchildren.

Pursuant to Trust's terms, whenever a contribution is made to Trust by Husband or Wife, certain beneficiaries are granted a right to withdraw the contribution.

Trust was initially funded with Amount 1 when created on Date 1. On Date 2, Husband and Wife each contributed closely-held stock to Trust valued at Amount 2, for a total contribution of Amount 3.

For the Year 1 calendar year, Attorney prepared and Taxpayers timely filed separate Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Husband and Wife. The Year 1 returns allocated Amount 2 of Husband's available GST exemption to Trust and Amount 2 of Wife's available GST exemption to Trust. After Year 1, Attorney was not engaged to prepare tax returns for Taxpayers.

In Year 2, Trust purchased a second-to-die life insurance policy on the joint lives of Husband and Wife. The policy was purchased on the advice of a life insurance

representative, and Taxpayers did not seek separate tax advice regarding the purchase. Taxpayers intended to make cash contributions to Trust to pay the premiums. The policy provided flexibility in the amounts and timing of premium payments. From Year 2 through Year 9, Taxpayers made cash contributions to Trust and the trustee used the fund to pay the insurance premiums. Total contributions for the various years were: Year 2- Amount 4; Year 3 - Amount 5; Year 4- Amount 6; Year 5 - Amount 7; Year 6 - Amount 8; Year 7- Amount 9; Year 8 - Amount 10; and Year 9 - Amount 11.

Beginning in Year 2, Taxpayers had several accountants. As a result of miscommunications among Taxpayers and the various accountants incorrect amounts were reported on gift tax returns, gift tax returns for several years were not filed, and GST tax exemption allocation errors were made.

In Year 5, CPA 1 discovered that no gift tax returns were filed for Year 2 or Year 3. Late gift tax returns for those years were filed on Date 3, however the amount of the gift for Year 3 was incorrectly calculated by Taxpayers.

For the years Year 6 through Year 8, Taxpayers engaged CPA 2 to prepare their returns. The Year 6 gift tax returns incorrectly reflected the total amount of cash gifts to Trust and erroneously reported an outright gift to Taxpayer's grandchildren as a gift to Trust. For Year 7 and Year 8, CPA 2 was not aware of any gifts to Trust and no gift tax returns were filed for Year 7 or Year 8.

In Year 9, Taxpayers engaged CPA 3 to prepare their tax returns. CPA 3 discovered the above-referenced errors.

To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST liability on the part of Trust or any of its beneficiaries. Husband and Wife had, and still have, sufficient GST tax exemption remaining and available to allocate sufficient GST tax exemption to Trust in order for Trust to have 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 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 2631(a), as in effect for the tax years 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 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) 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.

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 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 § 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, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, 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 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.

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 transfer 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.

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.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). 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.

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 Husband's available GST tax exemption, with respect to Husband's transfers to Trust in Year 7, and to allocate additional GST exemption with respect to Husband's transfers to Trust in Year 2, Year 3, and Year 6. The allocations will be effective as of the respective dates of the transfers to Trust, and the inclusion ratio of Trust will be determined based on the value of the transfers to Trust as determined for federal gift tax purposes and the amount of exemption allocated to the Trust. The deemed allocation rules in § 2632(c) are applicable to transfers made after December 31, 2000, and therefore no extension of time is necessary for the transfers to Trust in Year 8.

These allocations should be made on supplemental Forms 709 (in the case of allocations for Year 2, Year 3, and Year 6) and on original returns (in the case of allocations for Year 8) and filed with the Cincinnati Service Center at the following

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address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709 for Year 2, Year 3, and Year 6, and to the original return for Year 7.

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,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: