

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-100004-01
Date:
December 21, 2001

Re:

LEGEND:

Date 1 =

Taxpayer =

Spouse =

Trust =

Child =

Grandchild 1 =

Grandchild 2 =

Date 2 =

x =

Date 3 =

Date 4 =

Dear Sir:

This is in response to your letter dated December 9, 2000, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption. This letter responds to your request.

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The facts and representations submitted are summarized as follows: On Date 1, Taxpayer and Spouse established Trust, an irrevocable trust, for the benefit of Child and Child's descendants.

Article IV, Paragraph A of the Trust instrument provides that during Taxpayer and Spouse's lifetimes, the trustee shall distribute to Child, and/or any of her living descendants as much of the net income and principal of the trust, even to the extent of exhausting the same, as the trustee deems necessary for the health, maintenance, support in reasonable comfort and education of such beneficiaries, considering all circumstances and factors deemed pertinent to the trustee. Any undistributed net income shall be accumulated and added to principal.

Article IV, Paragraph B provides that following the death of Spouse, the trustee may make distributions to or for the benefit of Grandchild 1 and Grandchild 2; provided, however, that: (1) the distributions to either such beneficiary under this paragraph shall not exceed the total aggregate sum of fifty thousand dollars individually; (2) the decision as to whether or not all or any portion of such sums shall be distributed shall be within the sole discretion of the trustee, and no beneficiary shall at any time have any right to compel the trustee to exercise its discretion to distribute any such sum; and (3) such distributions may be made outright or in trust for the benefit of the grandchild. If such distribution is made in trust, then the trustee shall distribute to such grandchild as much of the net income and principal as the trustee from time to time believes desirable for the health, support in reasonable comfort, maintenance, education and best interests of such beneficiary, considering all circumstances and factors deemed pertinent by the trustee. Any undistributed net income shall be accumulated and added to principal. Upon the death of such beneficiary, the remaining balance of his or her share, if any, shall be distributed to his or her then living descendants by right of representation, or if none, to grantors' then living descendants by right of representation.

Article IV, Paragraph C provides that following the death of the survivor of Taxpayer and Spouse, and during the lifetime of Child, the trustee may in its sole discretion distribute to one or more of Child and her descendants then living and/or later born or adopted, as much of the net income and principal of the trust, even to the extent of exhausting principal, as the trustee from time to time believes desirable for the health, support in reasonable comfort, maintenance, education and best interests of such beneficiaries, considering all circumstances and factors deemed pertinent by the trustee. Any income not so distributed shall be added to the principal of the trust.

Article IV, Paragraph D provides that upon the death of Child, or if Child shall predecease the survivor of Taxpayer and Spouse, upon the death of the surviving grantor, the trustee shall divide the remaining balance of the trust into separate shares for the then living descendants by right of representation of Child.

Article VIII, Paragraph A provides that unless there is a contrary provision in either grantors' will, the trustee has the authority to allocate all or any portion of the generation-skipping transfer tax exemption under § 2631(a) of the Internal Revenue

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Code to any property as to which either grantor is the transferor, whether contained in this instrument or otherwise, including any property transferred by either grantor during his or her lifetime as to which such grantor did not make an allocation prior to death in such manner as it, in its sole discretion, deems best calculated to secure the most effective utilization of such exemption based on circumstances either known or reasonably foreseeable as of the expiration of the time within which such election is required to be made.

On Date 2, Taxpayer transferred cash and marketable securities with an aggregate value of \$ x to the Trust. Taxpayer timely reported these gifts on a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return. On the gift tax return, which was prepared by an accountant, the transfers to the Trust were listed on Schedule A, Part 2 as gifts that are also direct skips, rather than on Schedule A, Part 1 as gifts subject only to the gift tax. In addition, no Schedule C or Notice of Allocation was filed with the gift tax return. No additional transfers have been made to the Trust.

Taxpayer died on Date 3. Taxpayer's Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return was filed on Date 4.

You have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Taxpayer's GST exemption; and (2) that such allocation shall be made based on the value of the property transferred to the Trust as of Date 2, the date of the original transfers.

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 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)(1)) 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 Estate 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 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

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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, 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) 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) of the Procedure and Administration Regulations 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), 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 GST trust are to be treated as if not expressly prescribed by statute. Accordingly, 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.

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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, the executor of Taxpayer's estate is granted an extension of time of 60 days from the date of this letter to make an allocation of Taxpayer's available GST exemption, with respect to Taxpayer's transfers to the Trust. The allocation will be effective as of Date 2, the date of the transfers to the Trust, and the gift tax value of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust.

The ruling contained in this letter is 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. This election should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Cincinnati Service Center. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter