

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-149098-02
Date:
December 19, 2002

Re:

LEGEND:

- Taxpayer =
- Spouse =
- Date 1 =
- Trust 1 =
- Trust 2 =
- Daughter =
- Son =
- Individual Trustee =
- Corporate Trustee =
- x =
- Company =
- Attorney =
- Accountant =
- Accounting Firm =
- Date 2 =
- Year 1 =

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Date 3 =

Dear :

This is in response to your letter dated August 29, 2002, on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make allocations of Taxpayer's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Spouse created Trust 1 and Trust 2. Trust 1 and Trust 2 are substantially similar except that Trust 1 is for the primary benefit of Daughter and her descendants and Trust 2 is for the primary benefit of Son and his descendants. The trustees of Trust 1 and Trust 2 are Individual Trustee and Corporate Trustee.

Paragraph 2.1(a) of each trust provides that, while the named beneficiary is under the age of fifty (50) years, the trustee may pay to them or use for their benefit so much of the net income and principal of the trust as the trustee in the trustee's sole and absolute discretion determines to be required or advisable for the beneficiary's support in reasonable comfort, health, and education.

Paragraph 2.1(b) of each trust provides that after the named beneficiary reaches the age of fifty years, the trustee shall pay all the net income of each trust to the named beneficiary in convenient installments at least quarter-annually, and thereafter the trustee may pay principal to the named beneficiary as provided in paragraph 2.1(a).

Paragraph 2.2 of each trust provides that upon the death of the named beneficiary, the trust shall be distributed to the appointee or appointees, other than the named beneficiary's estate, his or her creditors or the creditors of his or her estate, upon such conditions and estates, in trust or otherwise, with such powers, in such manner and at such time or times as the named beneficiary appoints or directs by will specifically referring to this power of appointment, except that if the named beneficiary dies before reaching the age of 60 years, the trust may only be so appointed among one or more of Spouse's descendants. Upon the named beneficiary's death, to the extent he or she does not effectively exercise this power of appointment, the trustee shall distribute the trust as then constituted to the named beneficiary's then living descendants, per stirpes, or, if there are none, to Spouse's living descendants, per stirpes, except that any share distributable to Spouse's other child shall be held as a separate trust for his or her benefit in an identical trust as that for the deceased beneficiary.

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Paragraph 2.4 of each trust provides that the trustee may, in the trustee's sole and absolute discretion, add one or more of Spouse's descendants other than the named beneficiary as a beneficiary or beneficiaries under paragraph 2.1(a), in which case the trust shall thereafter be held and disposed of as provided in paragraph 2.1(a).

On Date 1, Spouse transferred x limited partner units of Company to each of Trust 1 and Trust 2. After Trust 1 and Trust 2 were created, and the gifts were made to each trust, Attorney prepared a summary of the tax and administrative matters related to each trust. Each summary provided, "The trust is a generation-skipping trust, and Spouse's \$1,000,000 GST exemption, as indexed for inflation, should be allocated to any gifts thereto, using a formula allocation producing a zero inclusion ratio." The summaries were delivered by Attorney to Taxpayer and Spouse, Individual Trustee, and Accountant, of Accounting Firm.

On or about Date 2, Taxpayer and Spouse each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the Year 1 gifts and electing to treat all gifts made by Taxpayer and Spouse to third parties as made one-half by each of them. The Year 1 gift tax return was prepared by Accountant. No GST allocation was made on either return.

In the process of reviewing estate planning recommendations for Taxpayer and Spouse on Date 3, Attorney requested copies of the Year 1 Gift Tax Return. Upon review of the return, Attorney discovered that GST exemption had not been allocated to the Year 1 gifts.

Taxpayer has 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 to make an allocation of Taxpayer's GST exemption for the transfers to the trusts in Year 1; and (2) the value of the transferred property for purposes of determining the inclusion ratio of each GST Trust will be the gift tax value of the transferred property.

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)) 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

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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 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, 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 § 2642(g)(1), which was enacted into law on June 7, 2001.

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, 2001-34 I.R.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

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(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, Taxpayer 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 trusts in Year 1. The allocation will be effective as of the date of the transfers to the trusts, and the value of the transferred property for purposes of determining the inclusion ratio of each GST Trust will be the gift tax value of the transferred property.

The allocations should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

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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

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

Enclosures

Copy for section 6110 purposes
Copy of this letter