

Internal Revenue Service

Department of the Treasury

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P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4/PLR-119415-99
Date: May 9, 2000

Re:

Legend:

Grantor =
Spouse =
Trust 1 =
Trust 2 =
Trust 3 =
Child 1 =
Child 2 =
Child 3 =
\$x =

Dear _____ :

This is in response to your submission of November 30, 1999, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an allocation of Grantor's remaining Generation-skipping Transfer (GST) Tax exemption to three irrevocable trusts.

Grantor established three irrevocable trusts (Trust 1, Trust 2 and Trust 3) on October 28, 1985, one trust for the benefit of each of Grantor's three children (Child 1, Child 2, and Child 3) and their issue. Other than different beneficiaries, the terms of each of the trusts are virtually identical. Grantor transferred \$x to each trust. At the same time, Grantor's spouse (Spouse) also transferred \$x to each trust. Spouse died on December 1, 1985. Spouse's estate filed a Federal gift tax return for calendar year 1985, on January 16, 1986, reporting the transfers to the three trusts. Grantor also filed a Federal gift tax return for calendar year 1985 on January 16, 1986, reporting the transfers to the three trusts. Neither Grantor nor Spouse's executor made any allocation of their available GST exemption with respect to their separate transfers to Trust 1, Trust 2, and Trust 3.

Under the terms of Trust 1, Trust 2, and Trust 3, the entire net income (or one-half until the child reaches age 30) of each trust will be paid to or applied for the benefit of the respective child of Grantor and Spouse. Upon each child reaching age 40, that child may withdraw that amount of principal from the trust that is in excess of the amount that can pass to that child's issue exempt from the generation-skipping transfer tax that is in effect at that time. Upon the death of each child, the remaining corpus of that child's trust will pass to or for the benefit of that child's issue. If there are no such

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issue, distribution will be made to the child's spouse, if living, otherwise to other issue of the Grantor or in accordance with the local state laws of intestacy.

In 1998, in the course of reviewing the estate plan, the failure of both Grantor and Spouse to make the allocation of their respective GST exemptions with respect to the Trust 1, Trust 2, and Trust 3 was discovered. As part of the underlying ruling request, Grantor represents that Grantor will allocate \$x of Grantor's GST exemption to each of Trust 1, Trust 2, and Trust 3.

Section 2601 imposes a tax on every generation-skipping transfer. Under § 1433(a) of The Tax Reform Act of 1986 (the Act), the tax applies to all generation-skipping transfers made after October 22, 1986.

Under § 1433(b)(2) of the Act and § 26.2601-1(b)(1)(i) of the Generation-skipping Transfer Tax Regulations, the GST tax will not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985.

Section 2631 provides for a GST exemption of \$1,000,000, which each individual (or, in the case of an estate, the individual's executor) may allocate to any property with respect to which such individual is the transferor for GST purposes.

Under § 2632(a), the allocation may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Under § 2632(c), any portion of an individual GST tax exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with that section.

Section 2642(b)(1) provides valuation rules for gifts for which the transferor has made an allocation of the GST exemption on a timely filed gift tax return. Section 2642(b)(3) provides valuation rules for allocations not made on a timely filed gift tax return.

Section 26.2632-1(b)(2) states that an allocation of a GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is being made, the amount of GST exemption allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

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Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. § 301.9100-3(a).

Section 1433(b)(2) of the Act generally subjects to the GST tax regime transfers under trusts that were created, or became irrevocable, after September 25, 1985. The section does not otherwise prescribe a due date for an allocation of GST exemption that would be effective as of the date of the transfer to the trust, if the transfer was made after September 25, 1985, and a gift tax return reporting the transfer was due and timely filed on or prior to October 22, 1986, the date of enactment of the statute. Accordingly, in this case, the time for filing an allocation of the GST exemption with respect to the transfer in trust made after September 25, 1985, that is effective as of the date of the transfer, is not prescribed by the statute, because a gift tax return reporting the transfer was due and filed timely prior to the enactment of the statute.

Based solely on the facts submitted and the representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Therefore, an extension of time to make an allocation effective as of October 28, 1985, of Grantor's available GST exemption with respect to Grantor's transfers to Trust 1, Trust 2, and Trust 3 is granted until 60 days from the date of this letter.

Except as specifically ruled herein, we express 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Copies of this letter should be attached to the election. Copies are attached for that purpose.

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

Enclosure

Copy for section 6110 purposes