

Internal Revenue Service
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2632.01-00

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Department of the Treasury

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

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4/PLR-112707-98

Date: October 29, 1998

Legend:

Grantor =

Spouse =

Trust =

\$x =

This is in response to your authorized representative's submission of June 12, 1998, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an allocation of Grantor's and Spouse's remaining Generation Skipping Transfer Tax (GST) exemption to an irrevocable trust.

Grantor established the Trust on November 19, 1985, and funded it at that time with stock valued for gift tax purposes at \$x. Grantor and Spouse requested and received an extension until October 15, 1986, to file their gift tax returns for calendar year 1985. On October 8, 1986, Grantor and Spouse each filed a Form 709, reporting the transfer to the Trust and electing to treat the transfer as made one-half by each spouse under § 2513. Neither Grantor nor spouse made any allocation of their available GST exemption with respect to the transfer to the Trust.

Under the terms of the Trust, the net income will be paid no less frequently than annually to the child of Grantor and Spouse. Upon the child's death, the remaining corpus will be divided into equal parts for the grandchildren of Grantor and Spouse. Each grandchild who is age 30 or older at the child's death will receive his or her share outright. Otherwise, each grandchild's share will be paid to the respective grandchild when he or she reaches age 30. If a grandchild dies before attaining age 30 and

is survived by issue, that grandchild's issue will receive the grandchild's share. If there are no such issue, distribution will be made to Spouse, if living, otherwise 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 was discovered.

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

Section 1433(b)(1) of the Tax Reform Act of 1986 provides that, for purposes of § 1433(a) and Chapter 13 of the Internal Revenue Code, any inter vivos transfer made after September 25, 1985, and on or before October 22, 1986, shall be treated as if it was made on October 23, 1986. Under § 1433(b)(2) 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.

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) 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.

In this case, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make an allocation effective as of November 19, 1985, of Grantor's and Spouse's available GST exemption with respect to the Trust is granted until December 31, 1998.

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.

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This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

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

Enclosure

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