

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-152872-01
Date:
January 29, 2002

Re:

Legend:

Year =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

Husband =

Wife =

Trust 1 =
Trust 2 =

Child 1=
Child 2 =

Law Firm =

State =

Dear :

This is in response to your letter dated August 28, 2001, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: On Date 1, Husband and Wife (the "Taxpayers") established an irrevocable trust, Trust 1, for the benefit of Child 1 and Child 1's descendants and an irrevocable trust, Trust 2, for the benefit of Child 2 and Child 2's descendants. The assets transferred to Trust 1 and Trust 2 (collectively referred to as "Trusts") constituted the separate property of Husband under State law, a community property state. Wife consented to split the gift and signified so on her 1999 Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return.

Paragraph C of Article III of Trusts provides that Trusts are to terminate upon (the "Date of Termination") that is twenty-one (21) years after the death of the last survivor of Taxpayers, Child 1, and Child 1's lineal descendants living on the date of the execution of Trust 1 or the

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death of the last survivor of Taxpayers, Child 2, and Child 2's lineal descendants living on the date of the execution of Trust 2. Thereupon, the trustee is to distribute the remaining properties of Trusts as follows: (1) to the lineal descendants, per stirpes, of Child 1 who are living on the Date of Termination of Trust 1 or to the lineal descendants, per stirpes, of Child 2 who are living on the Date of Termination of Trust 2; or (2) if there are none, to the lineal descendants, per stirpes, of Taxpayers who are living on the Date of Termination of Trusts. Notwithstanding the foregoing, if at the time of a distribution in accordance with this paragraph any such distributee is a beneficiary of a trust created under Trusts, then the distribution which, but for this sentence, would have been made to such distributee instead is to be transferred into and become a part of that trust held for the benefit of such person.

Paragraph AA of Article VI of Trusts provides that the trustee of Trusts has the full power and authority to divide the property of any trust created by Trust with an inclusion ratio, as defined in § 2642(a)(1), of neither one nor zero into two separate trusts representing two fractional shares, one with an inclusion ratio of one and the other with an inclusion ratio of zero.

It is represented that the value of the transferred assets to Trusts when added to prior taxable gifts of Taxpayers, was less than the applicable gift and estate tax exemption for Taxpayers and also less than the GST exemption of Taxpayers. For many years, Law Firm advised Taxpayers on estate planning issues. By signed affidavit, a partner in Law Firm stated that the issue of the allocation of GST exemption to the gift of the transferred assets to the 1999 Trusts was discussed with Taxpayers. The partner further stated that Law Firm advised Taxpayers that the gifts of the transferred assets would qualify for the GST exemption, if the appropriate allocation of exemption was made on a timely filed gift tax return.

Taxpayers relied upon Law Firm to prepare and file timely gift tax returns and to make timely GST allocations. In Year, Taxpayers provided Law Firm with an appraisal establishing the value of the transferred assets. On Date 2, a partner in Law Firm, received a letter from a representative of Taxpayers inquiring as to the status of Forms 709 and notices of allocations. On Date 3, Law Firm discovered that, due to an oversight, it had not filed the 1999 Forms 709 and notices of allocations for Taxpayers. Law Firm proceeded to contact accountants for Taxpayers to determine the basis of the transferred assets and allocations of the appraised value to specific assets, so that this information could be set forth correctly on the 1999 gift tax returns of Taxpayers. Law Firm filed 1999 gift tax returns for Taxpayers with the Service on Date 4. The GST allocations were not made at that time because of the uncertainty as to the proper procedure for making late allocations.

Taxpayers 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 allocations of Taxpayers' GST exemptions; and (2) that such allocations are to be made based on the value of the transferred assets to Trusts as of Date 1, 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

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§ 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 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 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

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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.

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, Taxpayers are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayers' available GST exemptions, with respect to Taxpayers' transfers to Trusts. The allocations will be effective as of Date 1, the date of the transfers to Trusts, and the gift tax value of the transfers to Trusts will be used in determining the amount of GST exemption to be allocated to Trusts.

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 rulings are directed only to the taxpayers 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 Dallas 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