

**Internal Revenue Service**

Department of the Treasury

Number: **200241021**

Washington, DC 20224

Release Date: 10/11/2002

Index Numbers: 2642.01-00  
9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-155175-01

Date:

July 3, 2002

Re:

LEGEND:

- Taxpayer =
- Spouse =
- Date 1 =
- Year 1 =
- Trust =
- Child 1 =
- Child 2 =
- Child 3 =
- Trust 1 =
  
- Trust 2 =
  
- Trust 3 =

Dear :

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

The facts and representations submitted are summarized as follows: On Date 1 in Year 1, Taxpayer and Spouse established Trust, an irrevocable trust, for the benefit of Child 1, Child 2, Child 3, and their descendants.

Article II of the Trust Agreement provides that the trustee shall divide the trust estate into equal trusts to create one exempt and one nonexempt trust for each of Child 1 and her descendants, Child 2 and his descendants, and Child 3 and his descendants.

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Article III provides that contributions to the trust estate each year shall be allocated equally to the separate trusts. The amount that qualifies for the exemption from the generation-skipping transfer tax shall be allocated to the exempt trust established for the benefit of each beneficiary and his or her descendants, and the balance of such contributions each year shall be allocated to the nonexempt trust established for the benefit of such beneficiary and his or her descendants.

Article IV, section 4.2, provides that the trustee may pay so much or all of the income of a Child's (herein referred to as "beneficiary") exempt trust to any one or more of the beneficiary and his or her descendants from time to time living, in equal or unequal proportions and at such times as the trustee deems best, considering the needs, other income and means of support, and best interests of the beneficiary and his or her descendants, individually and as a group, and any other circumstances and factors which the trustee deems pertinent. Any income not so paid shall be added to principal. No payment of income to a descendant shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

Article IV, section 4.3, provides that the trustee may pay so much or all of the principal of a beneficiary's exempt trust to any one or more of the beneficiary and his or her descendants from time to time living, in equal or unequal proportions and at such times as the trustee deems best, considering the needs, other income and means of support, and best interests of the beneficiary and his or her descendants, individually and as a group, and any other circumstances and factors which the trustee deems pertinent, but shall make no invasion for a Child from the principal of his or her exempt trust so long as any readily marketable assets remain in his or her nonexempt trust. No payment of principal to a descendant shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

Article IV, section 4.4, provides that upon the death of a beneficiary, his or her trust shall be held in trust hereunder or distributed to or in trust for such one or more of the beneficiary's descendants and Spouse's descendants (other than the beneficiary), with such powers and in such manner and proportions as the beneficiary may appoint by his or her will making specific reference to this power of appointment.

Article IV, section 4.5, provides that upon the death of a beneficiary, any part of his or her trust not effectively appointed shall be divided per stirpes among his or her then living descendants; or, if none, then per stirpes among the then living descendants of the nearest ancestor of the beneficiary who is a descendant of Spouse and who has one or more descendants then living; or, if none, then per stirpes among Spouse's then living descendants; or, if none, then per stirpes among the then living descendants of Spouse's mother.

Article V contains provisions governing the nonexempt trusts.

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During Year 1, Taxpayer and Spouse made several transfers to the Trust. The transfers were divided equally among Trust 1, for the benefit of Child 1 and her descendants; Trust 2, for the benefit of Child 2 and his descendants; and Trust 3, for the benefit of Child 3 and his descendants. During Year 1, pursuant to Article III of the Trust Agreement, only the exempt trusts were funded.

Taxpayer and Spouse each timely reported these gifts on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer and Spouse each consented to split the gifts under § 2513 of the Internal Revenue Code and be treated as the transferor of one-half of the gifts for generation-skipping transfer tax purposes under § 2652. On Taxpayer's gift tax return, which was prepared by an accountant, no allocation of GST exemption was made. Distributions have been made from Trust 1 to Child 1. No distributions have been made from Trust 2 or Trust 3.

You have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make an allocation of Taxpayer's GST exemption.

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 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum Federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

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)) 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 Generation-Skipping Transfer 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.

As applicable in Year 1, § 2642(b)(1) provided that, except as provided in

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§ 2642(f), if the allocation of the GST exemption to any 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) [deemed allocations to certain lifetime direct skips]--

(A) the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides 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). 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 on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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, the time for making the allocation shall be treated as if not expressly prescribed by statute.

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 (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 is 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) under the provisions of § 301.9100-3. See Notice 2001-50, 2001-34 I.R.B. 189.

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

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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 allocations of Taxpayer's GST exemption to Trust 1, Trust 2, and Trust 3. The allocations, once made, will be effective as of the date of the transfers to the trusts, and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts. 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, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

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.

Sincerely,  
William P. O'Shea  
Acting Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter