

**Internal Revenue Service**

Department of the Treasury

Number: **200241040**  
Release Date: 10/11/2002  
Index Numbers: 2642.01-00; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B09-PLR-114368-02  
Date:  
July 10, 2002

Re:

Legend:

Taxpayer =  
State =  
Trust =  
Date 1 =  
Independent Trustee =  
Son =  
Year 1 =  
Year 2 =  
Accounting Firm =  
Law Firm =  
Date 2 =  
\$x =

Dear :

This is in response to your letter dated February 22, 2002, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make a late allocation of Taxpayer's generation-skipping transfer ("GST") exemption.

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The facts and representations submitted are summarized as follows: On Date 1, Taxpayer, a resident of State, established an irrevocable inter vivos Trust for the benefit of Son, Son's spouse, Son's lineal descendants and charities.

Article 1, Paragraph 1 of Trust provides that the Independent Trustee shall pay to or for the benefit of any one or more of the group consisting of Son, Son's qualifying spouse, Son's lineal descendants, and any charitable organization located anywhere in the world, so much of the net income and principal of Trust in such proportions and amounts as the Independent Trustee shall determine in his absolute discretion.

Article 1, Paragraph 2 provides that Son shall have the power, exercisable at any time and from time to time, by notice in writing to the trustees, to appoint any part or all of the principal of Trust to any one or more of the group consisting of his qualifying spouse, his lineal descendants, and any charitable organization located anywhere in the world, in such manner and at such times as Son shall designate, except that no appointment shall be made to Son himself, his estate, his creditors, or the creditors of his estate.

Article 1, Paragraph 3 provides that Son shall have the power to appoint by specific reference to this special power in his will all or any part of the principal and income of Trust remaining at the time of his death to any one or more of the group consisting of his qualifying spouse and his lineal descendants, in such manner and at such times as Son shall designate, except that no appointment shall be made to Son himself, his estate, his creditors, or the creditors of his estate.

Article 1, Paragraph 4 provides that upon the death of Son, to the extent that the special powers of appointment were not fully exercised, the trustees shall continue to hold the Trust property as provided in Article 2, if Son has any then living lineal descendant. If Son has no then living lineal descendant, the trustees shall distribute the Trust property outright to Taxpayer's then living lineal descendants, in equal shares, per stirpes, or, if there are none, to Son's estate.

Article 2 provides that at any time the trustees are directed to hold, administer and dispose of Trust property in accordance with Article 2, the trustees shall divide the Trust property into separate equal shares so as to provide one share for each child of Son living at such time and one share for the then living lineal descendants, in equal shares, per stirpes, of each deceased child of Son. The share so allocated to each child shall be held in accordance with Article 2 and the part of the share payable to any lineal descendant of a deceased child of Son who shall have attained the age of majority shall be paid to him or her absolutely, free and clear of any trust. The part of the share payable to any lineal descendant of a deceased child of Son who shall not have attained the age of majority shall be held as a separate trust.

Article 2, Paragraph 1 provides that during the lifetime of each child with

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reference to whom a trust was created, the Independent Trustee shall, from time to time, pay to or for the benefit of any one or more of the group consisting of said child, said child's lineal descendants, and any charitable organization located anywhere in the world, so much of the net income and principal of such trust in such proportions and amounts as the Independent Trustee shall determine in his absolute discretion.

Article 2, Paragraph 2 provides that during his lifetime, subsequent to obtaining the age of twenty-one years, each child shall have the power, exercisable at any time by notice in writing to the trustees, to appoint any part or all of the principal and income of his trust to one or more of the group consisting of his lineal descendants and any charitable organization located anywhere in the world, in such manner and at such times as he may designate, except that no appointment shall be made, in trust or otherwise, to said child himself, his estate, his creditors or the creditors of his estate.

Article 2, Paragraph 3 provides that each child shall have the power to appoint by specific reference to this special power in his will all or any part of the principal and income of his trust remaining at the time of his death to one or more of the group consisting of such child's qualifying spouse and Taxpayer's lineal descendants, in such manner and at such times as said child shall so designate, except that such will must be executed, ratified or confirmed after said child has attained the age of twenty-one years, and except, further, that no appointment shall be made, in trust or otherwise, to said child himself, his estate, his creditors or the creditors of his estate.

Article 2, Paragraph 4 provides that upon the death of each child, to the extent that the special powers of appointment in paragraphs 2 and 3 were not fully exercised, the Independent Trustee shall distribute the entire principal of the trust as it shall then exist to the then living descendants of the child, in equal shares, per stirpes, to be theirs absolutely. If the child has no then living descendant, the trust property shall be held in accordance with Article 2 for the remaining lineal descendants of Son, or if there be none, the trust property shall be divided among Taxpayer's then living descendants, in equal shares, per stirpes, to be theirs absolutely, or if there be none, the trust property shall be distributed to said deceased child's estate. However, any share created for a child of Son shall be added to any trust then in existence for such child under the terms of Article 2.

Taxpayer created the Trust after meetings and discussions with his attorneys at Law Firm. The attorneys advised him, and he understood, that the allocation of his GST exemption to the Trust would make distributions from the Trust to his grandchildren exempt from the generation-skipping transfer tax. In Year 1, Taxpayer transferred \$x in cash to the Trust and relied upon the Accounting Firm which had been preparing his personal and business tax returns for over 10 years to prepare his gift tax return for Year 1. The certified public accountant at Accounting Firm who prepared the return was aware that the Trust was intended to be exempt from the GST tax, but inadvertently failed to prepare a Notice of Allocation and attach it to the return. The

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Law Firm did not review the return before it was filed. Taxpayer's gift tax return was timely filed but no allocation of his GST exemption was made.

In Year 2, Taxpayer transferred an additional \$x in cash to Trust. Accounting Firm prepared the return and, once again, failed to allocate Taxpayer's GST exemption.

Upon discovering that no GST exemption had been allocated on the Year 1 or Year 2 gift tax returns, Law Firm filed amended Year 1 and Year 2 gift tax returns on Date 2 and made a late allocation of Taxpayer's GST exemption.

You have requested the following rulings:

1. That an extension of time be granted under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Taxpayer's available GST exemption to the transfers made by Taxpayer to Trust in Year 1 and Year 2.
2. That the late allocations made on the amended Year 1 and Year 2 gift tax returns on Date 2 are void.

### Law and analysis

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) provides that the term "generation-skipping transfer" means: (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 2632(a)(1) provides that any allocation by an individual of his 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)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the

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transferor's lifetime, other than in 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 being 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 allocation. Section 26.2632-1(b)(2)(i) further provides that, except as provided in § 26.2642-3 (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

As applicable in Year 1 and Year 2, § 2642(b)(1) provided that, except as provided in § 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, 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). 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

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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 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 the Trust. The allocations, once made, will be effective as of the date of the transfers to the Trust in Year 1 and Year 2. Taxpayer should allocate \$x of his GST exemption to the Year 1 transfer and \$x to the Year 2 transfer. The allocation for each year 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 each supplemental Form 709. Copies are enclosed for this purpose.

Because these allocations will be effective as of the date of transfer, they will precede in time the allocations made by Taxpayer on the amended gift tax returns for Year 1 and Year 2, which were filed on Date 2. Under § 26.2632-1(b)(2)(i), the allocations of GST exemption made by Taxpayer on the amended gift tax returns for Year 1 and Year 2 will become void upon the filing of the supplemental gift tax returns authorized in this letter.

In accordance with a power of attorney on file with this office, we are sending copies of this letter to your authorized representatives.

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 provided above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or

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referenced in this letter.

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

Copies (2) of this letter  
Copy for section 6110 purposes