

Internal Revenue Service

Department of the Treasury

Number: **200242029**
Release Date: 10/18/2002
Index Number: 2642.00-00; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B9-PLR-124807-02
Date:
July 18, 2002

Re:

Legend

- Taxpayer =
- Spouse =
- Date 1 =
- Trust 1 =
- Trust 2 =
- A =
- B =
- Trustee =
- Attorneys =
- Date 2 =
- Date 3 =
- Date 4 =
- Year 1 =
- Year 2 =
- Year 3 =

Dear _____ :

This is in response to your letter dated March 27, 2002, 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) Tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer and Spouse established Trust 1, an irrevocable trust, for taxpayer's son and his lineal descendants and Trust 2, an irrevocable trust, for the taxpayer's daughter and her lineal descendants (collectively referred to as Trusts).

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Under the terms of Trust 1, the assets are held as a single trust and are available for distribution to A or his descendants. Article II, Paragraph A provides that the trustee shall pay to, or apply for the benefit of, a beneficiary net income and trust principal for the beneficiary's support, medical, dental, hospital, nursing, and education expenses. Any net income not expended shall be added annually to principal.

Article II, Paragraph D provides Trust 1 shall terminate upon the first to occur of the following events: (a) twenty-one years after the death of the last to die of the trustors, and all individual beneficiaries under the trust and all descendants of the trustor living at the time the trust became irrevocable; or (b) upon the death of the last to die of A or A's lineal descendants. If the trust terminates by operation of paragraph (a), the assets of the trust shall be distributed according to the principle of representation to the then living lineal descendants of A. If the trust terminates by operation of paragraph (b), the assets of the trust shall be distributed to the trustee of Trust 2, if it exists, to be held, administered and distributed in accordance with the terms of Trust 2. If Trust 2 does not exist, the assets of the trust shall be distributed to the trustors' then living descendants on the principal of representation. If the trustors have no living descendants, then all of the trust assets shall be distributed to the trusts, persons or entities entitled to the residue of the estate of the last to die of A and A's then living lineal descendants, as if such person's death had occurred on the date on which Trust 1 terminated.

The terms of Trust 2 are the same as Trust 1, except that the primary beneficiaries of Trust 2 are B and B's lineal descendants.

On Date 2, Taxpayer and Spouse each transferred \$5,000 to each trust. On Date 3, Attorneys advised Taxpayer and Trustee that a gift tax return (Form 709) was not required because the value of the transfer was less than the annual exclusion amount allowable under § 2503(b) of the Internal Revenue Code. Based upon Attorney's advice, Taxpayer did not file Form 709 for Year 1, which also resulted in a failure to timely allocate \$10,000 of his GST exemption.

In Year 2 and Year 3, taxpayer made gifts of \$10,000 in cash to each trust. Taxpayer also failed to file a Form 709 for Year 2 and Year 3. As a result, GST exemption was not allocated to the transfers in Year 2 and Year 3. Upon review of Taxpayer's estate plan in Date 4, Taxpayer was informed that gift tax filings and GST exemption allocations should have been made for transfers to the Trusts.

Taxpayer has 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 to make allocations of Taxpayer's GST exemption to Trust 1 and Trust 2; and (2) that such allocations are to be made based on the value of the transferred assets on the date transferred to Trust 1 and Trust 2.

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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 § 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

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.

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.

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Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 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 generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that 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.

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 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 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, Taxpayer is granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer's available GST exemption, with respect to Taxpayer's transfers to Trusts. The allocations will be effective as of 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.

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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 ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocation should be made on a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

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

Enclosures

Copy for section 6110 purposes
Copy of this letter