

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B09-PLR-130737-02  
Date:  
October 1, 2002

Re:

LEGEND:

- Taxpayer =
- Date 1 =
- Trust =
- Son =
- Spouse =
- x =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =

Dear :

This is in response to your letter dated May 28, 2002, on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Pursuant to an estate plan developed by her advisors, on Date 1, Taxpayer established the Trust, an irrevocable trust, for the benefit of Son, Son's wife (Spouse) and their descendants.

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Article II, paragraph A of the Trust provides the trustee with discretion to distribute the principal and income of the Trust to Son during his life for his health, support in reasonable comfort, and education. Article II, paragraph B of the Trust provides that upon Son's death, the trustee shall distribute to Spouse during her life, provided she is married to Son at the time of his death, as much of the net income and principal of the Trust as the trustee believes desirable for Spouse's health, support in reasonable comfort, and education. Article II, paragraph C of the Trust generally provides that upon the death of Son and Spouse, or upon Son's death, if Spouse is not married to Son at the time of his death, the principal of the Trust shall be distributed to Son's then living descendants, or if none, to the then living descendants of Taxpayer's other children, per capita.

On Date 1, Taxpayer transferred \$x to the Trust. Taxpayer reported the transfer to the Trust on a timely filed Year 1 Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return that was prepared by an accountant. The accountant was unaware of the need to allocate Taxpayer's GST exemption to the Trust, therefore, no allocation of Taxpayer's GST exemption was made on the Year 1 gift tax return for the Date 1 transfer to the Trust.

Son died in Year 2 and Spouse died in Year 3. Son had no living descendants at the time of his death. Pursuant to the terms of the Trust, the principal of the Trust is to be distributed to the descendants of Taxpayer's other children (Taxpayer's grandchildren). In Year 4, new accountants determined that a taxable termination had occurred upon Spouse's death in Year 3. The new accountants also discovered that none of Taxpayer's GST exemption had been allocated to the Trust. No additional transfers have been made to the Trust.

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 an allocation of Taxpayer's GST exemption for the transfer to the Trust in Year 1; and (2) as a result of such allocation, the Trust will have an inclusion ratio of zero.

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 2612(a)(1) provides, generally, that for purposes of chapter 13, the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless: (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

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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)(1) 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 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 § 2642(g)(1), which was enacted into law on June 7, 2001.

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.

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.

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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) and Notice 2001-50, 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 an allocation of Taxpayer's available GST exemption, with respect to Taxpayer's transfer to the Trust in Year 1. The allocation will be effective as of Date 1, the date of the transfer to the Trust, and the gift tax value of the transfer to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust. Provided the amount of GST exemption allocated to the Trust is equal to the value of the property transferred to the Trust for federal gift tax purposes, the Trust will have an inclusion ratio of zero.

The allocation 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, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

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.

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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. In addition, we express or imply no opinion regarding the value of the property transferred to the Trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

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.

Sincerely,

Heather C. Maloy

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter