

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

October 4, 2002

Legend

Taxpayer =

Date 1 =

Spouse =

Trust =

Stock =

State =

Accounting Firm =

\$x =

Years 1 =

c =

Date 2 =

Date 3 =

d =

Years 2 =

Dear :

This is in response to your letter dated June 19, 2002, requesting, on behalf of the Taxpayer, an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer ("GST") exemption.

The facts and representations submitted are summarized as follows: On Date 1, Spouse executed an irrevocable trust agreement ("Trust") for the benefit of his descendants and transferred Stock to the Trust. Trust provides that the trust assets are

to be held in a single trust to be divided into separate shares for each of Spouse's children. Trust further provides that the shares are to be redetermined upon the birth or adoption of a child after the date of the creation of the Trust.

Under the terms of Trust, until a child of Spouse reaches age 21, income from that child's share may be distributed to the child, in the trustees' discretion, for the child's support, maintenance and education. Once a child reaches age 21, income of that child's share may be distributed to the child and his or her descendants in the discretion of the corporate trustee. If income is insufficient, the trustees may distribute principal to the child, the child's spouse, or a dependent child of the child for support, maintenance, education, and medical and health purposes. The trustees may also distribute principal to the child for various purposes, such as establishing him or her in a business or profession, or assisting in the acquisition of a home.

Upon his or her death, each child of Spouse may appoint his or her share to his or her surviving spouse and Spouse's surviving descendants. Any property not appointed is to continue in trust for the child's descendants. If a child dies with no surviving issue, the child's share is to be divided into separate shares of equal value, one for each living child of Spouse, and one for each deceased child with issue surviving. Trust is to terminate upon the expiration of the period provided under the applicable State rule against perpetuities.

Taxpayer and Spouse each elected to split the gift of Stock to Trust under § 2513 and to be treated as transferor of one-half of the gift for generation-skipping transfer tax purposes under § 2652. Taxpayer reported the transfer on a timely filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) that was prepared by Accounting Firm. Spouse made additional gifts to Trust in the amount of \$x in Years 1. The c transfer of \$x to Trust was made before Date 2. Taxpayer and Spouse elected to split the gifts in each year, and Taxpayer retained Accounting Firm to prepare the gift tax returns. Gift tax returns were filed with respect to the transfers in each of the above years.

On Date 3, Spouse's attorney, who drafted Trust, sent a letter to Accounting Firm stating that additions made to Trust after Date 2, were not exempt from GST tax and gift tax returns should be filed allocating Taxpayer's GST exemption for all transfers to Trust subsequent to that date. Prior to the preparation of Taxpayer's gift tax return reporting the transfer in d, Spouse's attorney and a partner in Accounting Firm discussed the issue of the allocation of the Taxpayer's GST exemption to the transfers to Trust. As a result, an allocation of Taxpayer's exemption was made on the gift tax return filed for d. However, it was determined that Accounting Firm had inadvertently failed to allocate Taxpayer's GST exemption on any of the earlier gift tax returns which were prepared by the firm.

Taxpayer has requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of her GST exemption to the transfers to Trust; and (2) that such allocations shall be made based on the value of the property transferred to Trust as of the date of the original transfers.

Spouse's transfer of Stock to Trust at the time of the creation of Trust and Spouse's additional transfer of \$x in c were made prior to Date 2. Trust was irrevocable on Date 2. Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985; however, the tax does apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after that date.

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) 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 to the transfers made during the years under consideration, § 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return 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)(A), 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.

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) 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 allocations of her available GST exemption to the transfers to Trust in Years 2. The allocations will be effective as of the date of the transfers to Trust, and the allocations will be made based on the value of the property transferred to Trust as the date of the transfers. The allocations should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the forms. A copy is attached 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.

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

Enclosures

Copy for section 6110 purposes
Copy of this letter