

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-135603-02

Date:

October 25, 2002

In Re:

LEGEND:

Trust =
Trust Agreement =

Trustor =
Child =
Date 1 =
Date 2 =
A =
w =
x =
y =

Dear :

This is in response to your letter dated June 24, 2002, requesting, on behalf of Trustor, an extension of time under section 301.9100-3 of the Procedure and Administration Regulations and section 2642(g) of the Internal Revenue Code to make an allocation of Trustor's generation-skipping transfer (GST) tax exemption to an inter vivos transfer to an irrevocable trust.

A summary of the facts and representations submitted are as follows. On Date 1, Trustor created irrevocable Trust to benefit Child and Child's descendants. Article V of Trust agreement provides that during, Child's lifetime, Child is to receive the net income of Trust at least annually and so much of Trust's principal as trustee deems necessary in trustee's sole discretion.

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Article VI, Section 1, of Trust Agreement provides that Child has a testamentary limited power to appoint the trust estate remaining at Child's death among a group limited to Trustor's lawful descendants and Child's spouse. Article VI, Section 2, of Trust Agreement provides that Trust assets not effectively appointed are to be divided into as many equal shares as there are then living lawful children of Child and deceased lawful children of Child leaving lawful issue, and distributed free of trust.

Article XIII of Trust Agreement provides that it is Trustor's intention that Trust, and distributions from Trust on its termination, shall be exempt from generation-skipping transfer tax.

On Date 2, Trustor transferred A stock to Trust, the value of which exceeded Trustor's GST exemption amount by \$w due to the change in the market value of the stock between Date 1 and Date 2. Trustor retained the services of an accountant to prepare a United States Gift (and Generation-Skipping Transfer) Tax Return, Form 709, reporting the transfer to Trust.

It has been represented that Trustor intended to allocate all of her GST exemption amount to this transfer. In preparing the Form 709, the accountant determined that the present value of the life interest in Trust was \$x, and that the aggregate present value of the remainder interests in Trust was \$y. The accountant recorded these amounts on Schedule A, parts 1 and 2, respectively, of the Form 709. On Schedule C of the Form 709, the accountant reported as a generation-skipping transfer only the aggregate present value of the remainder interests in Trust, and inadvertently allocated only that part of Trustor's available GST exemption equal in value to the aggregate present value of the remainder interests.

It has been represented that Trustor has not allocated any GST exemption to any transfers subsequent to the funding of Trust and has not retained any incidents of ownership over any assets transferred to or owned by Trust.

A ruling has been requested allowing Trustor an extension of time under sections 2642(g)(1) and 301.9100-3 to allocate the remainder of her GST exemption to the transfer made on Date 2 to Trust, effective as of Date 2, in accordance with section 2642(b)(1).

LAW and ANALYSIS:

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under section 2611(a) as: (1) a taxable distribution; (2) a taxable termination, and; (3) a direct skip.

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Section 2602 provides that the amount of generation-skipping transfer (GST) 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 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 section 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 section 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under section 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 during the year at issue, section 2642(b)(1) provided that, except as provided in section 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 section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) – (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 section 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of section 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.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under section 2624(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

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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 section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 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 sections 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 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 section 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 section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) under the provisions of section 301.9100-3.

Requests for relief under section 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 section 301.9100-3 have been satisfied. Therefore, Trustor is granted an extension of time of sixty (60) days from the date of this letter to allocate her available GST exemption to her transfer of A stock to Trust on Date 2. The allocation, once made, will be effective as of Date 2, the date of the transfer to Trust. The value of the A stock as of Date 2 will be used in determining the amount of GST exemption to be allocated to Trust.

The allocation should be made on a separate supplemental Form 709 filed for Trustor that reflects the value as of Date 2 of the A stock transferred to Trust, filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. One copy is enclosed for this purpose.

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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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We note, in particular, that no opinion is expressed regarding the inclusion ration pertaining to the Date 2 transfer of stock to Trust.

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.

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

Sincerely,

Heather C. Maloy

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

Enclosures: Copy for section 6110 purposes
One copy of this letter