

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4-PLR-120241-02  
Date: OCTOBER 30, 2002

Re:

Legend:

Year 1	=
Date 1	=
Date 2	=
Grantor	=
Spouse	=
Lawyer	=
Law Firm	=
Accounting Firm	=
Trust	=
Charitable Trust	=
Child 1	=
Child 2	=
Child 3	=
\$x	=
\$v	=

Dear :

This is in response to your letter, dated April 3, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to allocate Grantor's and Spouse's (Taxpayers') available GST exemption to a transfer to a trust. This letter responds to your request.

The facts and representations submitted are summarized as follows: On Date 1, Grantor established an irrevocable trust (Trust) for the benefit of Child 1, Child 2, Child 3, and their descendants. Grantor transferred \$v to Trust.

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Article 3, paragraph 3.1 of Trust provides, generally, that until the trust is divided into shares under paragraph 3.2, the trustees may, in their discretion pay all or any part of the income and principal to Child 1, 2, and 3, and their issue. Any income not distributed is to be accumulated and added to principal.

Article 3, paragraph 3.2 provides, generally, that upon the first to occur of (i) the death of the survivor of Spouse and Grantor, or (ii) such time as the trustees decide to divide the trust property into shares under paragraph 3.2, the trustees shall divide the trust property into as many equal shares as are necessary to allocate one share to each of Grantor's children then living and one share to each of Grantor's children not then living who leaves issue then living.

Article 3, paragraph 3.3 provides that with respect to each share allocated to a child: (a) the trustees may pay all or part of the income and principal of the share to the child and child's issue and any income not paid may be accumulated or added to principal; and (b) the child's share shall terminate, if not sooner terminated, upon the earlier to occur of (i) such time as none of the child and his or her issue is living and (ii) twenty-one years after the death of the last survivor of Grantor, Spouse, and Grantor's children living on the date of the execution of this agreement. Upon termination, the trustees shall pay the property of the child's share to the child's issue then living per stirpes, or if none is then living, in equal shares, one share to each of Grantor's children who is not then living, but any distribution to a person who is then a beneficiary of a share of this trust shall be added to and dealt with as part of that share.

Article 3, paragraph 3.4 provides, generally, that if no beneficiary is living, the trustee shall deal with the remaining property as the Charitable Trust.

Grantor established the Trust on the advice of his personal lawyer, Lawyer, and a partner in Law Firm, which specializes in estate planning. Both Lawyer and the partner in Law Firm advised Grantor as to the tax advantages of a generation-skipping trust that would primarily benefit his future grandchildren.

Taxpayers retained Accounting Firm to prepare their Year 1 gift tax returns (Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return). Grantor told the accountant preparing the returns that the Trust was intended to be a generation-skipping trust. Grantor provided the accountant a copy of the Trust. However, the accountant inadvertently did not allocate Taxpayers' GST exemption to the Year 1 transfer to Trust on the returns. Taxpayers consented to split the Year 1 gift to Trust and signified so on their respective Year 1 returns.

On Date 2, the partner in Law Firm reviewed the returns for the first time and noticed that Taxpayers' GST exemption had not been allocated to the transfer to Trust on the returns. He consulted with Lawyer who brought it to the attention of the accountant in Accounting Firm.

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Taxpayers have requested an extension of time under §§ 301.9100-1 and 301.9100-3 and § 2642(g) of the Internal Revenue Code to allocate \$x of their respective GST exemption to the Year 1 transfer to Trust.

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 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is, generally, the excess of 1 over the applicable fraction determined for the trust from which the transfer is made, or in the case of a direct skip, the applicable fraction determined for such skip. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and the denominator of which is the value of the property transferred to the trust (or involved in the 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)) 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) 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 2513(a) provides, generally, that a gift made by one spouse to any person other than his spouse shall, for the purposes of chapter 12, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

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Section 2652(a)(2) provides that, if under § 2513, one-half of a gift is treated as made by the individual, and one-half of such gift is treated as made by the individual's spouse, then such gift shall be so treated for GST tax purposes.

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 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.

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. Notice 2001-50, 2001-34 I.R.B. 189, 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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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, the Taxpayers are granted an extension of time of 60 days from the date of this letter to allocate their available GST exemption to the Year 1 transfer to Trust with respect to the portion of the transfer each taxpayer is the transferor. The allocations will be effective as of Date 1, the date of the transfer to Trust, and the gift tax value of the transfer to Trust will be used in determining the amount of GST exemption to be allocated to Trust.

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.

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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. This election should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter