

## 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-135016-02

Date:

November 18, 2002

Re:

### LEGEND:

Taxpayer =

Spouse =

Date 1 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Company =

Year 1 =

Year 2 =

Year 3 =

X =

Y =

Z =

PLR-135016-02

\$a =\$b =\$c =

Dear :

This is in response to your letter dated June 20, 2002, on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make allocations of Taxpayer's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer and Spouse created Trust 1, Trust 2, Trust 3, and Trust 4 for the benefit of their children and their children's descendants.

Paragraph 3 of each trust provides that, initially, the trust shall be held as a single trust for the child, the child's spouse, and their issue, in accordance with the provisions of paragraph 4. After the death of the child, the trust estate will be divided by right of representation into separate shares, each of which shall be held as separate trusts for the then living issue of the deceased child. Each trust contribution received by the trustee shall be added pro rata to the trusts then being administered under this instrument.

Paragraph 4(a)(i) of each trust provides that, following each contribution to the trust, each beneficiary of the trust shall have a noncumulative right to withdraw from the trust an amount equal to ten thousand dollars or such higher amount as is then provided as the annual exclusion from gift tax under § 2503(b).

Paragraph 4(b)(i) of each trust provides that the trustee shall pay or apply for the benefit of the child as much of the net income and principal of the trust as is necessary for the child's proper health, education or support (or any combination of them) after taking into consideration other income and resources available for those purposes. In addition, the trustee may pay to or apply for the benefit of the child's spouse and issue as much of the net income and principal of the trust as is necessary for such person's proper health, education or support (or any combination of them) after taking into consideration other income and resources available for those purposes. Any net income not distributed shall be accumulated and added to principal.

Paragraph 4(b)(ii) of each trust provides that upon the death of the child, the trust estate shall be distributed in such manner and to such of the following persons as the child may have appointed in the child's last will: child's spouse, issue, siblings or the issue of the child's siblings. In the absence of appointment, the trust shall be divided

PLR-135016-02

into separate trusts by right of representation for the child's then living issue, and each trust shall be held administered and distributed in the manner described in subparagraph 4(c). If the child has no then living issue, then the unappointed portion of the trust shall be divided by right of representation and held in trust pursuant to this subparagraph 4(b) for the other living children of Taxpayer and Spouse, or pursuant to subparagraph 4(c) for the benefit of the then living issue of their deceased children.

Paragraph 4(c) of each trust provides that each trust for the benefit of the issue of a deceased child shall be held, administered, and distributed as a separate trust as hereafter provided.

Paragraph 4(c)(i) of each trust gives the trustee discretion to apply as much net income and principal as the trustee deems necessary for the beneficiary's health, education or support (or any combination of them), after taking into consideration their other income and resources.

Paragraph 4(c)(ii) of each trust provides, that upon the death of the beneficiary, the undistributed balance of the trust estate shall be distributed to or for the benefit of such of the following persons as the beneficiary may have appointed in his or her last will: his or her spouse, children, and brothers and sisters or their issue. In the absence of appointment, the property shall be divided by right of representation and held in further trust pursuant to the terms of subparagraphs 4(c)(i) and this subparagraph 4(c)(ii) for the benefit of that beneficiary's then living issue, or if there are none, for the benefit of then living issue of Taxpayer and Spouse, all pursuant to the terms of the trusts which are then being administered under the trust agreement.

Paragraph 6 of each trust provides that, unless sooner terminated in accordance with the provisions of this instrument, each trust created under this instrument shall terminate twenty-one (21) years after the death of the last survivor of the issue of Taxpayer and Spouse who are living on the date this instrument is executed. All principal and undistributed income of any trust so terminated shall be distributed to the then income beneficiary of that trust.

Paragraph 21 of each trust provides that it is the trustor's intention that this trust be completely exempt from the generation skipping transfer tax under Chapter 13 of the Internal Revenue Code. Paragraph 21 further provides that the trustor or the trustor's personal representative shall elect to allocate the trustor's GST exemption under § 2631 of the Code to the assets contributed to this trust on a timely filed gift tax or estate return so the trust will at all times have a zero inclusion ratio.

Taxpayer and Spouse each made gifts to their children's trusts. The gifts consisted of units in Company.

PLR-135016-02

During Year 1, Taxpayer transferred  $x$  units of Company to each of his four children's trusts. The reported value of the transfers from Taxpayer to the trusts in Year 1 was \$ $a$ . Taxpayer filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1. The Form 709 reflected \$ $a$  of GST exemption allocated to the transfers. The Form 709 was prepared by Taxpayer's tax attorney.

In Year 2, Taxpayer transferred  $y$  units of Company to each of the four trusts. The reported value of the transfers from Taxpayer to the trusts in Year 2 was \$ $b$ . In Year 3, Taxpayer transferred  $z$  units of Company to each of the four trusts. The reported value of the transfers from Taxpayer to the trusts in Year 3 was \$ $c$ .

In Year 2 and Year 3, Taxpayer's Forms 709 were prepared by Taxpayer's accountants. The accountants inadvertently failed to allocate any GST exemption on the Forms 709 for the Year 2 and Year 3 transfers to the trusts. Taxpayer represents that he relied upon his accountants to prepare the Forms 709 correctly.

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 transfers to the trusts in Year 2 and Year 3; and (2) Taxpayer is allowed to make the GST exemption allocations based on the value of the property transferred to the trusts as of the dates of the original transfers.

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)(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

PLR-135016-02

§ 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.

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.

PLR-135016-02

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 transfers to the trusts in Year 2 and Year 3. The allocation will be effective as of the date of the transfers to the trusts, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to the trusts. Therefore, the GST exemption allocations will be based on the value of the property transferred to the trusts as of the dates of the original transfers.

The allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 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.

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 trusts.

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

PLR-135016-02

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

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter