

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-118320-02

Date:

DECEMBER 16, 2002

Re:

LEGEND:

| | |
|------------|---|
| Husband | - |
| Wife | - |
| Trust | - |
| Company | - |
| Accountant | - |
| Attorney | - |
| Date 1 | - |
| Date 2 | - |
| Date 3 | - |
| <u>x</u> | - |

Dear :

This is in response to the your letter dated March 7, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows:

Husband and Wife are married. On Date 1, Husband created Trust for the benefit of his descendants. Husband contributed 66 shares of Company's non-voting common stock to Trust. The stock was valued at \$x.

Article III, § 3.1 of the trust agreement provides that the trustee has the discretion to accumulate income or distribute it to a class of beneficiaries consisting of Husband's issue. Section 3.2 provides for the discretionary invasion of principal when, in the trustee's sole discretion, the trustee deems it necessary for the reasonable

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health, support, maintenance and education of Husband's issue, after taking into consideration the beneficiary's income and other resources known to the trustee.

Article III, § 3.3 provides that 12 years after creation, or at such earlier time as the trustee may, in the trustee's absolute discretion determine, the trustee is to divide the then remaining balance into equal shares, allotting one share for each of Husband's daughters then living and one share for each deceased daughter who has issue then living. Sections 3.31 and 3.32 contain provisions regarding the discretionary payment of income and invasion of principal of the separate trust shares. Section 3.33 provides for the possible further distribution, in trust, upon the exercise of testamentary powers of appointment given to certain beneficiaries or, in default of such exercise, further division of the trust into additional shares.

Attorney drafted the trust agreement and Accountant prepared the gift tax returns. Husband and Wife elected to treat the gift of stock as made one-half by each under § 2513. The gifts were reported on timely filed gift tax returns, Date 2. In the course of preparing the returns, however, the accountant inadvertently failed to allocate any of Husband's and Wife's GST exemption to the transfer of Company's non-voting stock to Trust. In reviewing the returns, Attorney noticed the omission and on Date 3 filed supplemental Forms 709 to make late allocations of Husband's and Wife's GST exemption to the Trust.

Husband and Wife have requested an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to allocate their respective GST exemption and that such allocations are to be made based on the value of the transferred assets on the date transferred to Trust.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than such person's spouse shall be considered as made one-half by that person and one-half by such person's spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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.

Under § 2642(a)(1), the inclusion ratio with any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction." 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 to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust (or involved in the direct skip).

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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)) 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 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 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

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 transfer 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.

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

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professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband is granted an extension of time of 60 days from the date of this letter to make an allocation of his available GST tax exemption, with respect to the Date 1 transfer of Company's stock to Trust. The allocation will be effective as of the date of the transfer to the 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.

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. This election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer)

Tax Return and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. 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