

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-149708-02

Date:

January 7, 2003

In Re:

### LEGEND:

Trust =

Year 2 Trusts =

Trustor =

Accountant =

Accounting Firm =

Company 1 =

Company 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Year 1 =

Year 2 =

Year 3 =

Date 10 =

Date 11 =

a =

b =

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<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=

Dear :

This is in response to your letter dated August 9, 2002, requesting, on behalf of Trustor, 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 Trustor's generation-skipping transfer (GST) tax exemptions to certain transfers to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1, Trustor formed Trust, for the benefit of her four sons and their descendants. Article I, paragraph 1.1 of the Trust provides that the trust estate shall be divided into four trusts, one to benefit each son.

Article I, paragraph 1.3 provides that the trustee shall distribute principal and income to the beneficiary of each trust and such beneficiary's descendants subject to an ascertainable standard.

Article I, paragraph 1.5 provides that each son's trust will terminate upon his death. Every other trust created pursuant to the terms of the Trust shall terminate when the beneficiary thereof attains age 30 or upon the death of Trustor, whichever is later. Upon termination, the trustee shall distribute all unappointed trust property to the beneficiary thereof.

Article I, paragraph 1.6 provides that each beneficiary of a trust has a limited power to appoint his or her trust's property (outright or in trust) among persons related to the beneficiary by blood, marriage, or adoption or to any charity. The Trustor's sons must exercise this power by acknowledged instruments during their lifetime delivered to the trustee, while other beneficiaries must exercise this power by specific reference in their wills. No power of appointment is valid if it requires a distribution of trust property to an appointee prior to Trustor's death.

Article 1, paragraph 1.7 provides that if a beneficiary's death terminates his or her trust or a beneficiary dies prior to the termination of his or her trust, then the remaining unappointed assets of his or her trust shall be divided into shares and distributed to the beneficiary's then living descendants, per stirpes. If the recipient of a distribution is not the beneficiary of a trust established under the Trust, the distribution will be held in a separate trust to benefit that descendant, said trust to be governed by the terms of the Trust. If, however, the recipient of a distribution is the beneficiary of a trust established

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under the Trust, the distribution is to be added to that trust. In the event, the beneficiary is not survived by then living descendants, all the remaining unappointed assets of his or her trust shall be distributed, per stirpes, to the then living descendants of the Trustor's son who was the ancestor of such beneficiary or, if no such descendant is then living, to the Trustor's then living descendants, per stirpes.

On Date 1, Trustor transferred a shares of stock in Company 1 to Trust. Trustor retained Accountant to prepare her United States Gift (and Generation-Skipping Transfer) Tax Return, Form 709, reporting this transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust, and a Notice of Allocation was not attached to the Form 709.

On Date 2, Trustor transferred b shares of stock in Company 1 to Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 2 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 2, and a Notice of Allocation was not attached to the Form 709.

On Date 3, Trustor transferred c shares of stock in Company 1 to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 3 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 3, and a Notice of Allocation was not attached to the Form 709.

On Date 4, Trustor transferred d shares of stock in Company 1 and e shares of stock in Company 2 to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 4 transfers. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 4, and a Notice of Allocation was not attached to the Form 709.

On Date 5, Trustor transferred \$f to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 5 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 5, and a Notice of Allocation was not attached to the Form 709.

On Date 6, Trustor transferred interests in real property to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 6 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 6, and a Notice of Allocation was not attached to the Form 709.

On Date 7, Trustor transferred an interest in real property to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 7 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 7, and a Notice of Allocation was not attached to the Form 709.

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On Date 8, Trustor transferred an interest in real property to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 8 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 8, and a Notice of Allocation was not attached to the Form 709.

On Date 9, Trustor transferred interests in real property to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 9 transfer. Accountant incorrectly allocated Trustor's GST exemption to only a portion of the assets transferred to the Trust on Date 9, and a Notice of Allocation was not attached to the Form 709.

In Year 1, Trustor transferred additional real property and assigned certain note receivables to the Trust. A Form 709 was not prepared and filed reporting this transfer. You have represented that a Form 709 will be prepared and filed reporting this transfer.

On Date 10, Trustor transferred \$g to each of four trusts established for Trustor's sons in Year 2 (Year 2 Trusts). In the same year, on Date 11, Trustor transferred stock in publicly traded companies to the Trust. Trustor retained Accountant to prepare the Form 709 for the year of the Date 10 and Date 11 transfers. Accountant reported the transfers to the Year 2 Trusts and allocated Trustor's GST exemption to these transfers. However, the Accountant did not report the Date 11 transfer to the Trust. It has been represented that a Form 709 will be prepared and filed reporting this transfer.

Trustor engaged Accounting Firm to prepare her Year 3 Form 1041, United States Income Tax Return for Trusts and Estates. As part of that engagement, Accounting Firm reviewed the Trustor's Forms 709 and discovered the errors made thereon. It has been represented that Trustor has made no additional gifts to the Trust, the Year 2 Trusts, or any skip person.

The following rulings have been requested: (1) that Trustor be granted an extension of time under §§ 2642(g)(1) and 301.9100-3 to make a late GST exemption allocation to such additions to the Trust as Trustor elects; (2) that such allocations be made as of the respective dates of the original transfers to the Trust; and (3) that Trustor's only valid allocation of her GST exemption is the Date 10 allocation of \$g to each of the Year 2 Trusts.

#### LAW and ANALYSIS:

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.

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Section 2631(a) as in effect for the years involved, 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.

As applicable during the years at issue, § 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 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) – (A) 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 (B) 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), enacted on June 7, 2001, provides in part 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.

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. Section 2642(g)(1)(B) further provides that 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

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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 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) 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, Trustor is granted an extension of time of sixty (60) days from the date of this letter to allocate her available GST exemption to the transfers to the Trust. The allocations, once made, will be effective as of the date of the original transfers to the Trust. The value of the assets transferred as of the date of the original transfers will be used in determining the amount of the Trustor's GST exemption to be allocated to each transfer to the Trust. Further, Trustor's only valid allocation of her GST exemption is the Date 10 allocation of \$g to each of the Year 2 Trusts.

The allocations for Trustor should be made on separate supplemental Forms 709 for each year a transfer was made to the Trust to which Trustor is allocating her GST exemption, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. The supplemental return for the year of the Date 11 transfer should report the Date 11 transfer as well as any allocation of Trustor's GST exemption. For the Year 1 transfer,

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an original Form 709 should be filed reporting the transfer and any allocation of Trustor's GST exemption. A copy of this letter should be attached to each Form 709. Eleven copies are 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 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. Specifically, no opinion is expressed or implied regarding the value of the property transferred to the Trust and the Date 2 Trusts.

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

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 § 6110 purposes  
Eleven copies of this letter