

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-144448-02

Date:

JANUARY 10, 2003

Re:

Legend:

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| Year 1 | = |
| Year 2 | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
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| Date 6 | = |
| Date 7 | = |
| Date 8 | = |
| Date 9 | = |
| Date 10 | = |
| Date 11 | = |
| Date 12 | = |
| Grantor | = |
| Trust | = |
| Son | = |
| Daughter 1 | = |
| Daughter 2 | = |
| Law Firm 1 | = |
| Law Firm 2 | = |
| <u>a</u> | = |
| <u>b</u> | = |
| <u>c</u> | = |
| <u>d</u> | = |
| <u>e</u> | = |
| <u>f</u> | = |
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| <u>h</u> | = |
| <u>i</u> | = |

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Dear :

This is in response to your letter dated June 21, 2002, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows:

Grantor established Trust, an irrevocable trust for the benefit of Grantor's children and descendants, on Date 2. Trust was drafted by Law Firm 1.

Article First of Trust provides that the trustees shall divide Trust into three shares, one for each of Grantor's children, Son, Daughter 1, and Daughter 2.

Article Second provides that each share would be administered as a separate trust for each child of Grantor as follows: Income or principal may be paid to any one or more of the child and the child's issue for any purpose at the discretion of the disinterested trustee. Any net income not so paid may be added to principal at any time. Trust shall terminate twenty years after the death of the last to die of Grantor's children and grandchildren who were living on the date that Trust was established. The remaining principal and any balance of net income will be distributed by right of representation to the child's then living issue, or if none, by right of representation to Grantor's then living issue on the termination date. If at any time prior to the termination date, neither the child nor any issue of the child is then living, the then remaining principal and any balance of net income is to be added in equal shares to the other children's trusts then being administered.

On Date 3, Grantor made a gift of \$a in securities to each child's trust. Law Firm 2 prepared the gift tax return (Form 709) and filed the form on Date 4. On Date 5, Grantor made a gift of \$b in securities to each child's trust. Law Firm 2 prepared the gift tax return and filed the form on Date 6. On Date 7, Grantor made a gift of \$c in securities to each child's trust. Law Firm 2 prepared the gift tax return and filed the form on Date 8. On each return, Law Firm 2 inadvertently failed to allocate any of Grantor's GST tax exemption to the transfers.

On Date 9 and Date 10 (in Year 2), Son, acting on behalf of Grantor, under a power of attorney, transferred \$d of Grantor's cash and \$e of securities owned by the Grantor outright to each of Grantor's children and grandchildren.

On Date 11, Grantor died. The executor of Grantor's estate hired Law Firm 1 to settle Grantor's estate and to prepare Grantor's estate tax return (Form 706) and the Form 709 for the gifts made on Dates 9-10. In the course of preparing those tax

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returns, Law Firm 1 discovered Law Firm 2's failure to allocate GST exemption on the earlier gift tax returns. Pursuant to the advice of Law Firm 1, the decedent's executor filed a Form 709 reporting the gifts made on Dates 9-10, and allocated GST tax exemption to the gifts made on Date 9-10 to the extent these outright gifts exceeded the gift tax annual exclusion under section 2503(b) of the Internal Revenue Code. In addition, pursuant to the advice of Law Firm 1, on the Form 706 filed for Grantor's estate, the executor made a late allocation of Grantor's remaining GST exemption to Son's Trust and Daughter 1's Trust.

Based on the foregoing facts and representations, you request an extension of time under section 2642(g) and sections 301.9100-1 and 301.9100-3 to make the following allocations of GST exemption:

1. Allocation of \$a of GST exemption to each of Son's trust, Daughter 1's trust and Daughter 2's trust with respect to Grantor's Date 3 transfer to those trusts;
2. Allocation of \$b of GST exemption to each of Son's trust, Daughter 1's trust and Daughter 2's trust with respect to Grantor's Date 5 transfer to those trusts;
3. Allocation of \$f of GST exemption to each of Son's trust, Daughter 1's trust and Daughter 2's trust with respect to Grantor's Date 7 transfer to those trusts.

Section 2601 imposes a tax on every generation-skipping transfer (GST) (within the meaning of subchapter B). 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 determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), the inclusion ratio with respect to 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 section 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under section 2631 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.

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.

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Application of Rev. Proc. 98-61, 1998-2 C.B. 811, to the facts of this case results in a generation-skipping transfer tax exemption for Year 2 under section 2631 of \$g.

Section 2632(a)(1) provides that any allocation by an individual of his 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)(i) 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 2642(b)(1) provides that, except as provided in section 2642(f), if the allocation of GST exemption to any transfers of 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) or (c)(1)– (A) the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 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) 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 section 2642(b)(1) or (2), and an election under section 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, 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 section 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 section 2642(b)(1) or (b)(2) or an

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election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in section 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.

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) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) 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, the estate of Grantor is granted an extension of time of sixty (60) days from the date of this letter to make allocations of her GST exemption as follows: Allocation of \$a of GST exemption to each of Son's trust, Daughter 1's trust, and Daughter 2's trust with respect to Grantor's Date 3 transfer to those trusts; Allocation of \$b of GST exemption to each of Son's trust, Daughter 1's trust, and Daughter 2's trust with respect to Grantor's Date 5 transfer to those trusts; Allocation of \$f of GST exemption to each of Son's trust, Daughter 1's trust, and Daughter 2's trust with respect to Grantor's Date 7 transfer to those trusts. The allocations should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. Copies are enclosed for this purpose. These allocations will be effective as of the date of each gift.

In view of the relief granted herein, the Grantor is deemed to have used \$h of her available GST exemption prior to the transfers on Date 9 and Date 10. Accordingly, the allocation of GST exemption made by the Grantor's executor with respect to the gifts on Dates 9-10 on the Form 709 reporting those transfers, is void except for \$i (\$g exemption for Year 2 less \$h that will be allocated pursuant to the relief granted above).

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The allocation made by Decedent's executor on the Form 706 with respect to Son's trust and Daughter 1's trust is void.

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

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.

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter