

## Internal Revenue Service

## Department of the Treasury

Number: **200318056**

Washington, DC 20224

Release Date: 5/2/2003

Index Numbers: 2642.00-00  
9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-164971-02

Date:

January 24, 2003

Re:

### LEGEND:

Taxpayer =

Date 1 =

Foundation =

Trust 1 =

Trust 2 =

Trust 3 =

X =

Accounting Firm =

Year 1 =

Dear :

This is in response to your letter dated November 20, 2002, on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer established an irrevocable deed of trust for the benefit of his children and more remote descendants.

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Part I of the trust provides that the trustee shall divide the principal into equal shares so that there will be one share for each child of Taxpayer living on Date 1 and shall keep each such share invested as a separate trust. Part I.A. of the trust provides that during each child's lifetime and thereafter until the termination of his or her trust, the trustee shall distribute: (1) as much of the net income and principal as the trustee, in his sole discretion, deems desirable to one or more of a child and his or her descendants in such amounts or proportions as the trustee deems appropriate; and (2) any net income not so distributed shall be accumulated and added to the principal of his or her trust.

Part I.B. of the trust provides that each child's trust shall terminate immediately prior to the expiration of twenty-one years after the death of the last survivor of Taxpayer's descendants who are living on Date 1, and thereupon the then-remaining principal of his or her trust shall be paid: (1) to his or her then living descendants, per stirpes, or in default of such descendants; (2) to Taxpayer's then living descendants, per stirpes, or in default of such descendants; (3) to the Foundation.

Part I.C. of the trust provides that notwithstanding the foregoing provisions, on a child's death, the then remaining principal of his or her trust shall be paid to or in trust for one or more of his or her descendants on such terms as he or she may appoint by a will.

Pursuant to Part I of the trust, three separate trusts, Trust 1, Trust 2, and Trust 3, were established, one for the benefit of each of Taxpayer's three children and their descendants. On Date 1, Taxpayer transferred \$x to each of Trust 1, Trust 2, and Trust 3. Taxpayer relied on Accounting Firm to prepare his Year 1 gift tax return. Taxpayer's Year 1 gift tax return was timely filed, however, Accounting Firm inadvertently failed to allocate Taxpayer's GST exemption to the trusts. No additional transfers have been made to, and no distributions have been made from, Trust 1, Trust 2, or Trust 3.

Taxpayer has requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer's GST exemption to Trust 1, Trust 2, and Trust 3 for the transfers made in Year 1.

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.

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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 § 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.

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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.

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 allocations of Taxpayer's available GST exemption, with respect to Taxpayer's transfers to Trust 1, Trust 2, and Trust 3 in Year 1. The allocations will be effective as of the dates of the transfers to the trusts. The amount of GST exemption to be allocated to Trust 1, Trust 2, and Trust 3 will be based on the amount of money transferred to the respective trusts as of the date of the transfers.

The allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return 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 accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

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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