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Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-151758-02

Date:

MARCH 07, 2003

Re:

LEGEND:

Grantor	-
Wife	-
Trust A	-
Trust B	-
Law Firm	-
Date 1	-
<u>x</u>	-

Dear :

This is in response to your letter dated September 11, 2002, 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 generation-skipping transfer (GST) tax exemptions to transfers to trusts.

The facts and representations submitted are summarized as follows:

On Date 1, Grantor created two trusts, Trust A and Trust B, each for the benefit of a separate child and child's issue. Each trust was funded with common stock valued at \$x.

Under the terms of the trusts, each child is entitled to the trust income for life and is entitled to receive discretionary distributions of corpus if necessary for health, education, maintenance, support, and if sufficient funds are available, for continuation of a business or profession, purchase of a home, or for any other purpose that will further the best interest of the beneficiary. At the death of each child, that trust will continue for the benefit of the child's issue. The issue of each deceased child will be entitled to a distribution of the entire portion of the trust upon reaching age 40.

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Grantor hired Law Firm to draft the trust agreements and to prepare the gift tax returns. Grantor and his wife (Wife), elected to treat the gift of stock as made one-half by each under § 2513 of the Internal Revenue Code. The gift of stock was reported on separate timely filed Form 709s. Each Form 709 reported Grantor's and Wife's respective one-half of the gift of stock. In reviewing the returns after they had been filed, the Grantor's new attorney noticed that Law Firm had failed to allocate Grantor and Wife's GST exemption to the transfers to Trusts A and B.

Affidavits from Grantor, Wife, and their original attorney discuss the Grantor's goal of achieving full estate plan tax advantages. The attorney admits it was his mistake not to allocate the GST exemption.

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

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).

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

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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 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 (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, G, 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.

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.

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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, both Grantor and Wife are granted an extension of time of 60 days from the date of this letter to make an allocation of their respective GST tax exemption, with respect to the Date 1 transfers of stock to Trust A and Trust B. The allocation will be effective as of the date of the transfers to the trusts, and the gift tax value of the transfers to trusts 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 709, United States Gift (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 709. 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

CC: