

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-149160-03

Date:
December 09, 2003

Taxpayer =
Trust =

Date 1 =
Year 1 =
x =
Daughter =
Year 3 =
Year 2 =

Dear

This is in response to your letter dated August 12, 2003, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: Taxpayer created the Trust on Date 1. Taxpayer funded the Trust during Year 1 with \$x through various transfers. Trust is an irrevocable trust for the benefit of Taxpayer's daughter and her descendants.

Section 1.1 of the Trust provides for discretionary distributions of income and principal to Daughter and Daughter's descendants during Daughter's life. Section 1.2 of the Trust provides the Daughter may appoint the assets of the Trust to anyone other than herself, her estate, her creditors, or the creditors of her estate in her will. If Daughter does not exercise this testamentary power of appointment, the Trust assets will be distributed to Daughter's then living descendants, per stirpes.

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The Trust was drafted by Taxpayer's attorney. In a letter accompanying the Trust, Taxpayer's attorney advised Taxpayer that the Trust is a generation-skipping trust that will be subject to the GST tax unless Taxpayer's GST tax exemption is allocated to transfers made to the Trust on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax return"), filed for each year in which a transfer is made to the Trust. Taxpayer engaged the services of an accountant, unrelated to Taxpayer's attorney, to prepare her Year 1 gift tax return. Taxpayer provided the accountant with a copy of the Trust instrument for use in preparing her Year 1 gift tax return. The Year 1 transfers were reported on a timely filed gift tax return. Taxpayer's accountant, however, inadvertently failed to allocate Taxpayer's GST tax exemption to the Year 1 transfers.

Taxpayer's attorney discovered the error in Year 3 when preparing the Year 2 gift tax returns for transfers to another of the Taxpayer's trusts. In order to correct the error, the Taxpayer's Attorney included on the Year 2 Form 709 a Notice of Late Allocation with respect to the Year 1 transfers to the Trust.

Taxpayer represents that the Year 1 transfers are the only transfers that have been made to the Trust as of the date of this letter. There have been no distributions of principal or income from the Trust.

Taxpayer now requests an extension of time under § 2642(g), § 301.9100-1, and § 301.9100-3 to make an allocation of her GST tax exemption with respect to the assets transferred to Trust in Year 1, based on the Year 1 value of the assets. In addition, Taxpayer requests a ruling that the late allocation made on Taxpayer's Year 2 gift tax return with respect to the Trust is void.

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 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST tax 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 2632(a)(1) provides that any allocation by an individual of his or her GST tax 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.

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Section 26.2632-1(b)(2) provides in relevant part that, except as provided in § 26.2642-3 (relating to charitable lead annuity trusts), an allocation of GST tax exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST tax 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, 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 tax 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.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST tax 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 GST 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

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Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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 to 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 an allocation of Taxpayer's available GST tax exemption with respect to Taxpayer's transfers to the Trust in Year 1. The allocation will be effective as of the dates of the transfers to the Trust, and the gift tax value of the transfer will be used in determining the amount of the GST tax exemption to be allocated to Trust. The inclusion ratio for the trust should be determined under §§ 2642(a) and 2642(b). The allocation should be made on a Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

When Taxpayer makes an allocation pursuant to the relief granted above, the late allocation made on Taxpayer's Year 2 gift tax return with respect to the Year 1 transfers to Trust is not necessary to obtain a zero inclusion ratio with respect to Trust. The late allocation made on the Year 2 gift tax return, therefore, is void in accordance with § 26.2632-1(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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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

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

Enclosures

Copy of this Letter for § 6110 purposes
Copy of this Letter

cc: