

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-155183-01
Date:
May 20, 2002

LEGEND:

- Date 1 =
- Taxpayer =
- Trust =
- Son =
- Daughter =
- x =
- Date 2 =
- Child 1 =
- Child 2 =
- Child 3 =
- Date 3 =
- Accounting Firm =
- Date 4 =
- Attorney =
- Accountant =

Dear :

This is in response to your authorized representative's letter dated September 24, 2001, and subsequent correspondence, requesting an extension of time under

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§ 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer established Trust, an irrevocable trust, for the benefit of Taxpayer, Son, and Daughter.

Item 2 of Trust instrument provides that the trustee shall pay all of the net income from the Trust to Taxpayer in convenient installments, but not less frequently than quarterly, for a period of 10 years from Date 1. The trustee shall make no other payments of Trust income or principal to any person during this time.

Item 3 provides that after 10 years from Date 1, the trustee shall cease making any payments to Taxpayer (except for accrued but undistributed income which shall be distributed to Taxpayer as soon as practical) and Taxpayer shall have no further right or interest in the trust. The trustee shall then divide the Trust property into two equal shares. One share shall be distributed outright to Son, and the other share shall be distributed outright to Daughter. Should either child die prior to receiving his or her share of the Trust, such child's share shall be distributed, per stirpes, among such child's then living descendants, if any. If such child should have no descendants then living, then his or her share shall be distributed to Taxpayer's other child or his or her descendants.

On Date 1, Taxpayer transferred marketable securities with an aggregate value of \$ x to Trust. Taxpayer timely reported these gifts on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. No allocation of Taxpayer's generation-skipping transfer tax exemption was made on the return, and no allocation, if made, would have been effective until the close of the estate tax inclusion period.

Daughter died on Date 2, prior to the termination of Trust, survived by Child 1, Child 2, and Child 3. Upon termination of Trust on Date 3, the portion of Trust intended for Daughter was distributed, per stirpes, to Daughter's children (Taxpayer's grandchildren).

Taxpayer engaged Accounting Firm to prepare her income tax return for the 2000 tax year, as well as the final tax return for Trust which terminated in 2000. Since Taxpayer had not made any taxable gifts in 2000, and Accounting Firm was unaware of Daughter's death, Accounting Firm did not prepare a gift tax return for 2000. Therefore, Accounting Firm did not advise Taxpayer of the need to allocate her GST exemption to Trust at the time Trust terminated.

On Date 4, Taxpayer engaged Attorney to review her estate plan. Attorney discovered that the termination of Trust in 2000 resulted in a taxable termination for GST tax purposes. Attorney advised Son, as Taxpayer's fiduciary, that a Form 709 should have been filed for 2000, allocating Taxpayer's GST exemption to Trust. Son

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contacted Accountant to determine the status of Taxpayer's gift tax return. Accountant informed Son that Taxpayer had not filed a gift tax return for 2000 and that no extension for filing a gift tax return had been requested.

You have requested an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Taxpayer's GST exemption to Trust.

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 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. Section 2642(a) provides the method for determining the inclusion ratio.

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 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(f)(1) provides, generally, that except as provided in regulations, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under § 2642(f)(2)).

Section 2642(f)(2) provides that in the case of any property to which § 2642(f)(1) applies, the value of such property shall be its value for purposes of chapter 11 if such property is includible in the gross estate of the transferor (other than by reason of § 2035), or its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

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Section 2642(f)(3) provides that for purposes of § 2642(f), the term “estate tax inclusion period” means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of the date on which there is a generation-skipping transfer with respect to such property, or the date of the death of the transferor.

Section 26.2632-1(c)(1) provides, in part, that where an allocation has not been made prior to the termination of the estate tax inclusion period, an allocation is effective at the termination of the estate tax inclusion period during the transferor's lifetime if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the estate tax inclusion period terminates (timely ETIP return).

As amended by § 536(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16, and applicable to transfers subject to the estate or gift tax made after December 31, 2000, § 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) [deemed allocation to certain lifetime direct skips] or § 2632(c)(1) [deemed allocation to certain lifetime transfers to GST trusts]--

(A) the value of such property for purposes of determining the inclusion ratio 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) 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). 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, 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, the time

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for making the allocation shall be treated as if not expressly prescribed by statute.

Section 301.9100-1(c) of the Procedure and Administration Regulations 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.

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), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. Accordingly, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3. See Notice 2001-50, 2001-34 I.R.B. 189.

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 an allocation of Taxpayer's available GST exemption with respect to Taxpayer's transfers to Trust. The allocation, once made, will be effective as of Date 3, the time of the close of the estate tax inclusion period and, for purposes of determining the inclusion ratio, the value of Trust on Date 3 shall be considered the value of the transfers to the Trust. The allocation 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.

The ruling contained in this letter is 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.

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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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter