

**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-101334-02  
Date:  
May 31, 2002

Re:

LEGEND:

Date 1 =

Taxpayer 1 =

Taxpayer 2 =

Trust =

Child 1 =

Child 2 =

w =

Date 2 =

A =

Partnership =

x =

Year 1 =

B =

y =

Date 3 =

C =

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z =  
 Year 2 =  
 Date 4 =

Dear :

This is in response to your letter dated December 26, 2001, and subsequent correspondence, 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 1 and Taxpayer 2, husband and wife, established Trust, an irrevocable trust, for the benefit of their children, Child 1 and Child 2, and their grandchildren. On Date 1, Taxpayer 1 and Taxpayer 2 also transferred \$w cash to Trust.

Article Two, Subdivision 2.1, of Trust provides that the trustees shall divide the trust property into separate equal shares for each living child of Taxpayer 1 and Taxpayer 2, Child 1 and Child 2, and shall further divide each share into so many parts as is necessary to have each part have an inclusion ratio of either zero or one for Generation-Skipping Transfer Tax purposes and shall hold each part, in trust, for such child during the term of the trust, as follows: The trust shall be for the benefit of the child with respect to whom the trust is held (the "designated beneficiary"), and also for the benefit of his or her issue (collectively the "beneficiaries"). The trust shall terminate at the designated beneficiary's death. The trustees shall pay any or all of the income and principal to any of the beneficiaries, as the independent trustees determine, for any reason. Any income not paid shall be added to principal, annually. When a trust terminates, the trustees shall pay the trust fund as the designated beneficiary directs by will by the exercise of a special power to appoint among the issue of Taxpayer 1 and Taxpayer 2 or, to the extent that the designated beneficiary fails to effectively exercise such power, to the designated beneficiary's issue, or, if none, to the issue of Taxpayer 1 and Taxpayer 2; provided, however, that if any share is payable to a child of Taxpayer 1 and Taxpayer 2, it shall be added to the trust for such child's benefit in existence under Article Two, Subdivision 2.1, if any, or, if not, it shall be paid to such child.

On Date 2, Taxpayer 1 and Taxpayer 2 each transferred A of their limited partnership units in the Partnership to Trust. Taxpayer 1 and Taxpayer 2 represent that the A units in Partnership had an aggregate value of \$x at the time of the transfer. Taxpayer 1 and Taxpayer 2 relied on a qualified tax professional to advise them in tax matters, including preparing their gift tax returns for Year 1 and Year 2. Taxpayer 1 and Taxpayer 2 each timely filed Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1, and Taxpayer 1 and Taxpayer 2 each consented to

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have the gifts made by them to third parties during the calendar year as made one-half by each of them. On the Year 1 gift tax returns, the tax professional reported gifts by each Taxpayer 1 and Taxpayer 2 of B limited partnership units valued at \$y. In addition, the Year 1 gift tax returns did not include the initial \$w transfer to Trust on Date 1. A notice of allocation was attached to each taxpayer's Form 709 and \$y of each taxpayer's GST exemption was allocated to Trust. No allocation of Taxpayer 1 and Taxpayer 2's GST exemption was made for the initial \$w transfer to Trust.

On Date 3, Taxpayer 1 and Taxpayer 2 each transferred C limited partnership units in the Partnership to Trust. Taxpayer 1 and Taxpayer 2 represent that the C units in Partnership had an aggregate value of \$z at the time of the transfer. Taxpayer 1 and Taxpayer 2 each timely filed gift tax returns for Year 2, and Taxpayer 1 and Taxpayer 2 each consented to have the gifts made by them to third parties during the calendar year as made one-half by each of them. On the Year 2 gift tax returns, the tax professional did not include Taxpayer 1 and Taxpayer 2's gifts of limited partnership units to Trust in Year 2. No allocation of Taxpayer 1 or Taxpayer 2's GST exemption was made for the transfers to Trust in Year 2.

On Date 4, the Internal Revenue Service informed Taxpayer 1 and Taxpayer 2 that their Year 1 gift tax returns were being examined. Upon notification that their Year 1 gift tax returns had been selected for examination, Taxpayer 1 and Taxpayer 2 reviewed the gift tax returns and discovered the mistakes contained therein.

Taxpayer 1 and Taxpayer 2 have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1 and Taxpayer 2's GST exemption for transfers to Trust in Year 1 and Year 2; and (2) that such allocations shall be made based on the value of the property transferred to Trust as of the date of the original transfers.

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)) 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) 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.

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Section 26.2632-1(b)(2) 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 § 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 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 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), 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 GST trust are 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) 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 1 and Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to make allocations of their available GST exemption, with respect to Taxpayer 1 and Taxpayer 2's transfers to Trust in Year 1 and Year 2. The allocations will be effective as of the date of the transfers to Trust, and the gift tax value of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to Trust.

These allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Cincinnati Service Center at the following address:

Internal Revenue Service Center  
Cincinnati, OH 45999

A copy of this letter should be attached to the supplemental Forms 709. Copies are 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.

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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. In addition, we express or imply no opinion regarding the value of the property transferred to Trust.

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, a copy of this letter is being sent to Taxpayer 1 and Taxpayer 2.

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter