

Internal Revenue Service

Department of the Treasury

Number: **200302017**
Release Date: 01/10/2003
Index Number: 2632.01-00
9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-161419-01

Date: **SEPTEMBER 30, 2002**

Re:

Legend:

- Year 1 =
- Year 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Grantor =
- Grantor's Spouse =
- Trustee =
- Trust =
- Son =
- Son's Spouse =
- Daughter =
- Daughter' Spouse =
- \$ X =
- Year 1 =
- Year 2 =
- Year 3 =

Dear :

This is in response to your letter dated October 31, 2001, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: On Date 1, Grantor and Grantor's Spouse (the Grantors) established an irrevocable trust (Trust), for the benefit of Grantors' children and their spouses and their descendants. The asset transferred to Trust was an insurance policy insuring the joint lives of Grantor and Grantor's Spouse.

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Article One, paragraph B provides that until the death of the survivor of the Grantors, the Trustee may use and apply each trust year so much of the principal (but not income) of the trust estate, as is necessary to pay any premiums due on any life insurance policies comprising a part of the trust principal. Paragraph B further provides that Trustee may also during any trust year pay to or use and apply for the benefit of Grantors' children and their respective spouses , so much of the net income and principal of the trust estate, in equal or unequal amounts, at any time , as the Trustee, in the Trustee's discretion, may deem necessary or appropriate for their respective maintenance, health, education and support, taking into account, however, any income or principal otherwise reasonably available to them from other sources known to the Trustee. Distributions made during Grantors' lives to Son and Son's Spouse and Daughter and Daughter's Spouse should be as closely equivalent as possible. Any trust income not used during any trust year is to be accumulated and added to principal.

Article Four, paragraph A provides generally that with respect to each transfer prior to the death of the survivor of the Grantors to the trust, each of Grantors' then living children and their then respective spouses and their respective then living descendants, on the date of any transfer have the right, for a period of 30 days following receipt of notice of the transfer, to demand immediate distribution to himself or herself of a pro rata portion of the transfer. To the extent that the withdrawal right is not exercised before the expiration of the 30-day period, the withdrawal right will lapse, but only to the extent of the greater of the amounts specified in § 2514(e)(1) and (2) of the Internal Revenue Code, reduced by the amounts of any lapses as to that beneficiary in previous calendar years.

Article Six, paragraph A, provides that upon the death of the survivor of the Grantors, the Trustee will collect the insurance proceeds and administer and distribute the proceeds to trusts for the benefit of Grantor's descendants. Article Six, paragraph D provides that upon the termination of the trust, any separate trust estate will terminate, and upon such termination, the balance of the trust estate will be distributed free of trust, to the living person for whom the trust was established.

In Year 1 and Year 2 Grantor made gifts of \$X to Trust. Grantor and Grantor's Spouse each filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return on Date 3, under extension. On the returns, the parties consented to treat Grantor's gifts as having been made one-half by each under § 2513. A CPA prepared the returns. However, with respect to the returns filed for both Year 1 and Year 2, the CPA erred in allocating Grantor's and Grantor's Spouse's GST tax exemptions. Consequently, insufficient exemption was allocated to Trust to maintain a zero inclusion ratio under § 2642(a).

In updating their estate plan in Year 3, Grantors' attorney received copies of Grantor's Year 1 and Year 2 Forms 709. The attorney informed Grantors that insufficient GST tax exemption had been allocated to Trust such that the Trust's inclusion ratio was greater than zero.

As noted above, under the terms of Trust, with respect to gift transfers by Grantor or Grantor's Spouse during their joint lifetimes to Trust, their two children, and each of their children's spouses and each of the children's descendant's have a discretionary withdrawal right , exercisable in writing by each delivered to the trustee of Trust, within 30 days of such

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transfer. You represent that, during Year 1 and Year 2 there were six individuals, in their capacity as beneficiaries, who were eligible and had a discretionary right of withdrawal. None of the six individuals exercised their right of withdrawal during Year 1 or Year 2, or any time thereafter.

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.

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 GST exemption under § 2631 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 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 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 2652(a)(2) provides that, if under § 2513, one-half of a gift is treated as made by the individual, and one-half if treated as being made by the individual’s spouse, then such gift shall be so treated for GST tax purposes.

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

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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.

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 not 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 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. Notice 2001-50, 2001-34 I.R.B. 189, 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.

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, Grantor and Grantor's Spouse 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 the transfers to Trust on Date 5 and Date 6. The

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allocations will be effective as of Date 5 and Date 6, the dates of the transfers to Trust in Year 1 and Year 2, and the gift tax value of the transfers to Trust 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 rulings are directed only to the taxpayers 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: