

**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-142966-02  
Date:  
January 14, 2003

Re:

Legend

- Taxpayer =
- Trust =
- Date 1 =
- Law Firm =
- Daughter =
- a =
- Corporation T =
- b =
- Year 1 =
- Spouse =
- c =
- Year 2 =
- d =
- Corporation U =
- e =
- f =
- Year 3 =

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g =  
Corporation V =  
h =  
i =  
Year 4 =  
i =  
Corporation W =  
k =  
Corporation X =  
l =  
m =  
n =  
Year 5 =  
p =  
q =  
Year 6 =  
r =  
Corporation Y =  
s =  
Corporation Z =  
t  
u  
v  
Accounting Firm =

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Dear \_\_\_\_\_ :

This is in response to your letter dated August 2, 2002, requesting an extension of time under § 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 Trust on Date 1. Trust was drafted by an attorney at Law Firm.

Article First of the Trust instrument provides that during each taxable year of the trust the trustees shall pay the net income at least quarterly to Daughter. After Daughter's death and until the expiration of the trust term as specified in Article Second, the trustees shall pay the net trust income at least quarterly to Daughter's issue.

Article Second of the Trust instrument generally provides that the trust shall terminate upon the death of Taxpayer and all of the issue of Taxpayer but in no event later than twenty-one years after the death of the survivor of Taxpayer and Daughter. Upon the termination of the trust the trustees shall pay over the principal to Daughter's then living issue.

On Date 1, Taxpayer transferred a shares of Corporation T stock into Trust. Taxpayer timely filed a Form 709, United States Gift (& Generation-Skipping Transfer) Tax Return ("gift tax return") for Year 1 reporting the transfer to Trust. On the gift tax return, Taxpayer represented that the value of the shares of Corporation T stock transferred to Trust on Date 1 had a value of \$b. None of Taxpayer's GST exemption was allocated on the Year 1 gift tax return. Taxpayer and Spouse consented, under § 2513 of the Internal Revenue Code, to have the gifts treated as if one-half (\$c) had been made by each of them.

In Year 2, Taxpayer transferred d shares of Corporation U stock into Trust. Taxpayer timely filed a gift tax return for Year 2 reporting the transfer to Trust. On the gift tax return, Taxpayer represented that the value of the shares of Corporation U stock transferred to Trust in Year 2 had a value of \$e. None of Taxpayer's GST exemption was allocated on the Year 2 gift tax return. Taxpayer and Spouse consented, under § 2513 of the Internal Revenue Code, to have the gifts treated as if one-half (\$f) had been made by each of them.

In Year 3, Taxpayer transferred g shares of Corporation V stock into Trust. Taxpayer filed a gift tax return for Year 3 reporting the transfer to Trust. On the gift tax return, Taxpayer represented that the value of the shares of Corporation V stock transferred to Trust in Year 3 had a value of \$h. None of Taxpayer's GST exemption was allocated on the Year 3 gift tax return. Taxpayer and Spouse consented, under

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§ 2513 of the Internal Revenue Code, to have the gifts treated as if one-half ( $\$i$ ) had been made by each of them.

In Year 4, Taxpayer transferred  $j$  shares of Corporation W stock and  $k$  shares of Corporation X stock into Trust. Taxpayer filed a gift tax return for Year 4 reporting the transfers to Trust. On the gift tax return, Taxpayer represented that the shares of Corporation W stock transferred to Trust in Year 4 had a value of  $\$l$  and the shares of Corporation X stock transferred to Trust in Year 4 had a value of  $\$m$ . None of Taxpayer's GST exemption was allocated on the Year 4 gift tax return. Taxpayer and Spouse consented, under § 2513 of the Internal Revenue Code, to have the gifts treated as if one-half ( $\$n$ ) had been made by each of them.

In Year 5, Taxpayer transferred  $\$p$  into Trust. Taxpayer timely filed a gift tax return for Year 5 reporting the transfer to Trust. On the gift tax return, none of Taxpayer's GST exemption was allocated on the Year 5 gift tax return. Taxpayer and Spouse consented, under § 2513 of the Internal Revenue Code, to have the gifts treated as if one-half ( $\$q$ ) had been made by each of them.

In Year 6, Taxpayer transferred  $r$  shares of Corporation Y stock and  $s$  shares of Corporation Z stock into Trust. Taxpayer timely filed a gift tax return for Year 6 reporting the transfers to Trust. On the gift tax return, Taxpayer represented that the shares of Corporation Y stock transferred to Trust in Year 6 had a value of  $\$t$  and the shares of Corporation Z stock transferred to Trust in Year 6 had a value of  $\$u$ . None of Taxpayer's GST exemption was allocated on the Year 6 gift tax return. Taxpayer and Spouse consented, under § 2513 of the Internal Revenue Code, to have the gifts treated as if one-half ( $\$v$ ) had been made by each of them.

The gift tax returns for Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6 were prepared by an accountant at Accounting Firm. The accountant prepared the gift tax returns based on conversations and information provided to him by the attorney at Law Firm. Neither the accountant nor the attorney ever advised Taxpayer of the existence of the GST exemption, the desirability of allocating that exemption to the transfers, or the consequence of not allocating the exemption to the transfers reported on the gift tax returns.

Taxpayer has requested an extension of time to make allocations of Taxpayer's GST exemption under § 2632(a) and § 2642(b)(1) for the transfers made to Trust in Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6.

Section 2513(a)(1) of the Internal Revenue Code provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

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Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 25.2513-2(a)(1)(ii) of the Gift Tax Regulations provides that consent to the application of the provisions of § 2513 with respect to a “calendar period” shall, in order to be effective, be signified by both spouses. If both spouses file gift tax returns within the time for signifying consent, it is sufficient if the consent of each spouse is signified on his own return.

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 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 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 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) - (A) 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, 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, 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.

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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.

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that 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 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.

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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 file supplemental Forms 709 and a Notices of Allocation for Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6 on which Taxpayer will allocate Taxpayer's GST exemption to Trust. The allocations will be based on the values of the stock at the time of the individual transfers and will be effective as of the date of the individual transfers to Trust. A copy of this letter should be attached to each supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.

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

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

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