

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-159517-02
Date:
January 15, 2003

Re:

LEGEND:

- Decedent =

- Attorney =
- Trust =

- Date 1 =
- Spouse =
- Date 2 =
- Son =
- x =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Accounting Firm =
- Year 1 =
- Year 2 =
- Year 3 =

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Year 4 =
 Year 5 =
 Date 8 =
 Date 9 =
 y =

Dear :

This is in response to your letter dated October 23, 2002, on behalf of Decedent's estate, requesting an extension of time under § 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: After consulting Attorney, Decedent established the Trust on Date 1. The Trust is an irrevocable life insurance trust for the benefit of his children and more remote descendants.

Part I(1)(a) of the Trust sets forth the "Crummey" withdrawal power provisions. Part I(1)(b) of the Trust provides that after compliance with the withdrawal provisions of Part I(1)(a) and until the death of the survivor of Decedent and Spouse, the trustee may pay or apply the net income and principal of the trust to or for the benefit of any one or more of Decedent's descendants that the trustee, in his sole discretion, determines to be necessary for their health, education and support in reasonable comfort.

Part I(2) of the Trust provides that upon the death of the survivor of Decedent and Spouse and after compliance with the provisions of Part I(1) of the Trust, the trustee shall divide the property of the then remaining trust into as many equal shares as there are living children of Decedent and deceased children of Decedent represented by living descendants. One share shall be set apart in a separate trust for each living child of Decedent to be administered in accordance with Part I(2)(a). The trustee shall divide one share for a deceased child of Decedent with descendants then living into stirpital parts and set out each such stirpital part for each such descendant in a separate trust to be administered in accordance with Part I(2)(a).

Part I(2)(a) provides, in part, that the trustee shall pay to or for the benefit of each beneficiary for whom a separate trust shall be established so much of the net income and principal of his trust as the trustee shall determine is necessary for his health, education and support in reasonable comfort. The trustee may also pay to or for the benefit of any one or more of the descendants of a beneficiary for whom a

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separate trust shall be established so much of the remaining net income and principal of the trust as the trustee shall determine is necessary for their health, education and support in reasonable comfort.

On the death of a beneficiary for whom a separate trust has been established, the trustee shall pay over that amount of the remaining trust property pursuant to the terms and conditions that the beneficiary shall have designated in a will duly admitted to probate. If said deceased beneficiary shall not have effectively exercised this power of appointment as to all of the property of his trust, the trustee shall, on his death, divide the unappointed property into as many equal shares as there are then living children of said beneficiary and deceased children of said beneficiary represented by then living descendants. The trustee shall set out one share in a separate trust for each then living child of said beneficiary and shall administer such trust in accordance with the terms of Part I(2)(a). The trustee shall divide one share for a deceased child of the beneficiary with descendants then living into stirpital parts and set out each such stirpital part for each such descendant in a separate trust to be administered in accordance with the terms of Part I(2)(a).

Part I(2)(b) of the Trust provides that notwithstanding the above, no trust created hereunder shall continue beyond 21 years after the death of the last to die of Decedent, Spouse and those of Decedent's descendants who are living on the date of execution of this trust agreement; and upon the expiration of such period all trusts created hereunder shall terminate and the remaining trust property of each such trust shall be distributed in equal shares to the beneficiaries of such trust to whom the income of such trust may then be paid who are nearest of kin to Decedent.

On Date 2, the insurance policy was issued to Son, as trustee of the Trust. The annual premiums payable on the policy were \$x. The \$x premiums were paid by Decedent to the Trust from Decedent's own funds on the following dates: Date 3, Date 4, Date 5, Date 6, and Date 7. No additional transfers have been made to, and no distributions have been made from, the Trust.

Due to inadvertence by Attorney and Accounting Firm regarding the preparation of the appropriate Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and a miscommunication between those parties and Decedent and Spouse, no gift tax returns were filed by Decedent or Spouse for Year 1, Year 2, Year 3, Year 4, and Year 5 and no allocation of Decedent's or Spouse's respective GST exemptions was made. Decedent died on Date 8.

Spouse was appointed executrix of Decedent's estate and sought the assistance of Attorney in fulfilling her duties as executrix. In assisting Spouse, Attorney discovered that neither Decedent nor Spouse had filed gift tax returns for Year 1, Year 2, Year 3, Year 4, or Year 5. After Spouse became aware that gift tax returns had not been filed, Spouse filed gift tax returns on or before Date 9, for Year 1, Year 2, Year 3, Year 4, and

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Year 5, both for herself and on Decedent's behalf. Each of the gift tax returns reported the \$x transfer to the Trust and contained the taxpayers' consent to split gifts made by them to third parties during the calendar year under § 2513 of the Internal Revenue Code.

Decedent's Year 1, Year 2, Year 3, and Year 4 gift tax returns did not contain any allocation of Decedent's GST exemption to the Trust because Attorney advised Spouse that her ability to make timely allocations of Decedent's GST exemption for those years depended on the Service's issuance of a favorable ruling as requested herein. Decedent's Year 5 gift tax return was timely filed and \$y (one-half of \$x) of Decedent's GST exemption was allocated to the Trust.

Spouse, as executrix of Decedent's estate, has requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Decedent's GST exemption to the Trust for the transfers made in Year 1, Year 2, Year 3, and Year 4.

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)) that 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) 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.

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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 § 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 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 301.9100-3 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) 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

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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, Decedent's estate is granted an extension of time of 60 days from the date of this letter to make allocations of Decedent's available GST exemption, with respect to Decedent's transfers to the Trust in Year 1, Year 2, Year 3, and Year 4. The allocations will be effective as of the dates of the respective transfers to the Trust. The amount of GST exemption to be allocated to the Trust will be based on the amount of money transferred to the Trust as of the date of the transfers.

The allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709. A copy is 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.

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 the Trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Decedent's estate.

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.

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for section 6110 purposes
Copy of this letter