

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-152873-02
Date:
January 27, 2003

Re:

LEGEND:

Decedent =

Spouse =

Former Spouse =

Estate =

Trust 1 =

Trust 2 =

Accountant =

\$a =

\$b =

\$c =

\$d =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

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Year 3 =

Dear :

This is in response to your authorized representative's letter dated September 23, 2002, on behalf of the Estate, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make allocations of Decedent's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Decedent created Trust 1, an irrevocable trust for the primary benefit of Former Spouse, Decedent's children, and the descendants of Decedent's children. Decedent and Former Spouse contributed \$a to Trust 1 in Year 1.

Article 3, Paragraph 3.1 provides that each beneficiary who is living at the time property is contributed to Trust 1 shall have a right to withdraw a portion of the contributed property. The portion of property subject to withdrawal by a beneficiary shall be determined by dividing the total value of the contributed property by the number of trust beneficiaries. However, the maximum amount of withdrawal by any one beneficiary during any one calendar year shall not exceed \$b.

Article 4, Paragraph 4.2 provides that during Former Spouse's lifetime, the trustee may distribute to the beneficiaries or apply for their benefit, so much of the income and principal of the trust estate as the trustee shall determine. Distributions of income or principal may be paid or applied for the benefit of any or all of the beneficiaries or to any one of them to the exclusion of the others. Any income which the trustee shall decide not to distribute may be accumulated as income or may be added to the principal of the trust as the trustee shall determine.

Article 4, Paragraph 4.3 provides that, upon the death of Former Spouse, the trustee shall divide the remaining trust property into separate trust shares for Decedent's four named children and their spouses and children.

Article 4, Paragraph 4.4 provides that during the lives of Decedent's children, the trustee is authorized to accumulate all or part of the net income of these separate trusts, or pay to or apply the net income and the principal of each separate fund for the use and benefit of the beneficiaries of the separate funds. Distributions of income and principal from each separate fund shall be made as the trustee deems necessary to provide for the beneficiaries' suitable maintenance, support, health and education so as to permit them to maintain their accustomed manner of living. Any annual net income from a separate fund which is not distributed to a beneficiary of such fund shall be

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added to and become a part of the principal of the separate fund from which it was earned.

Article 4, Paragraph 4.5 provides that upon the death of each of Decedent's children, their separate trust shares shall terminate and the property shall be divided equally among their then living children and per stirpes among the then living issue of any deceased child. If a beneficiary is 30 years of age at the time of division of their separate trust share, then the trustee shall distribute to that beneficiary, in fee simple and free of trust, his or her portion of the trust estate. If a beneficiary is under the age of 30 years, then, either the entire share or a part thereof shall be held in a separate trust for him or her.

On Date 2, Decedent created Trust 2, a revocable trust. Trust 2 became irrevocable upon the death of Decedent on Date 3.

Article 4, Paragraph 4.2 provides that if Spouse predeceases Decedent, the trustee will allocate the unused portion of Decedent's generation skipping transfer tax exemption amount, reduced by the value of any other property which passes, or has already passed, in a manner that qualifies for the maximum generation skipping transfer tax exemption amount, to Trust 1, to the extent that it qualifies for the generation skipping transfer tax exemption, and then the remaining trust property, if any, will be distributed as further provided.

Taxpayer and Spouse gifted \$c to Trust 1 on Date 4 and \$d to Trust 1 on Date 5. Accountant prepared Decedent's Year 2 and Year 3 gift tax returns. However, he incorrectly used Forms 709-A, United States Short Form Gift Tax Return, and, inadvertently, a GST allocation was not made for the Year 2 or Year 3 transfers. On Decedent's Forms 709-A for Year 2 and Year 3, Spouse consented to have the gifts made by Decedent to third parties as made one-half by each. No additional transfers were made to Trust 1 after Year 3.

You have requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Decedent's GST exemption for the transfers to Trust 1 in Year 2 and Year 3; and (2) that such allocations shall be made based on the value of the property transferred to Trust 1 as of the respective dates 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)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

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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.

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.

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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) 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, the personal representative of 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 Taxpayer's transfers to Trust 1 in Year 2 and Year 3. The allocations will be effective as of the dates of the transfers to Trust 1, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to the trust. Therefore, the GST exemption allocations will be based on the value of the property transferred to Trust 1 as of the respective dates of the transfers.

The allocations 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, OH 45999. A copy of this letter should be attached to the supplemental Form 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 Trust 1.

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In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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