

**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-154908-02  
Date:  
February 24, 2003

Re:

LEGEND:

Taxpayer 1 =

Taxpayer 2 =

Date 1 =

Trust =

Date 2 =

Year 1 =

a =

Year 2 =

Date 3 =

Date 4 =

Life Insurance Policy  
1 =

b =

Life Insurance Policy  
2 =

c =

Date 5 =

d =

Date 6 =

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Date 7 =  
Date 8 =  
e =  
Year 3 =  
Date 9 =  
Date 10 =  
Date 11 =  
Date 12 =  
Year 4 =  
Date 13 =  
Date 14 =  
Date 15 =  
Date 16 =  
Date 17 =  
Year 5 =  
f =  
Attorney 1 =  
Date 18 =  
Attorney 2 =  
Date 19 =

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

This is in response to your letter dated September 23, 2002, on behalf of Taxpayer 1 and the estate of Taxpayer 2, 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 2 established the Trust, an irrevocable life insurance trust, for the benefit of Taxpayer 1, their children, and their children's descendants.

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Article IX, paragraph A of the Trust provides that commencing with the date of Taxpayer 2's death, the trustee shall pay the annual net income from the trust in quarterly or other convenient installments, but at least annually, to Taxpayer 1 during her lifetime.

Article IX, paragraph B of the Trust provides that upon and after the death of Taxpayer 1 or upon the death of Taxpayer 2 if Taxpayer 1 shall not survive him, the trustee shall divide the trust estate as then constituted into equal separate shares so as to provide one share for each then living child of Taxpayer 2 and one share for the then living descendants, collectively, of each deceased child of Taxpayer 2.

Article IX, paragraph C of the Trust provides that the share for the benefit of a living child of Taxpayer 2 shall continue in trust as follows: (1) The net income from such trust shall be paid to such child in quarterly or other convenient installments, but at least annually, throughout the duration of the trust. (2) The trustee may also pay to or apply directly for the benefit of such child such sums from the principal of the trust as the trustee deems necessary or advisable to provide for such child's proper care, support, maintenance, education and welfare. (3) When such child has attained the age of twenty-five (25) years, the trustee shall distribute to such child one-half of the trust as it then exists. When such child has attained the age of thirty (30) years, the trustee shall distribute to such child all or any portion of the trust then remaining. (4) If such child of Taxpayer 2 should die before receiving complete distribution of the trust held for her benefit, the trustee shall distribute the balance of her trust to her issue by right of representation; or if she should die without issue, then to the other living child of Taxpayer 2.

Article IX, paragraph D of the Trust provides that the share for the benefit of the issue of a deceased child of Taxpayer 2 shall be divided into equal shares by right of representation and administered and distributed as follows: (1) The share for any such issue who has attained the age of twenty-five (25) years shall be distributed outright to such issue. (2) The share for any such issue who has not attained the age of twenty-five (25) years shall be administered in trust until he attains such age and then be distributed outright to him. In the meantime, the trustee may pay to him or apply for his benefit such sums from the net income and principal thereof as the trustee deems necessary or advisable to provide for his proper care, support, maintenance and education. If he should die before receiving complete distribution of the trust held for his benefit, the trustee shall distribute the balance of such trust to his issue by right of representation; but if he shall have died without issue, then to his surviving brothers and sisters and the issue of a deceased brother or sister by right of representation.

On Date 2, in Year 1, Taxpayer 2 transferred \$a to the Trust. In Year 2, Taxpayer 2 made the following transfers to the Trust: (1) on Date 3, Taxpayer 2 transferred \$a to the Trust; (2) on Date 4, Taxpayer 2 transferred Life Insurance Policy 1 to the Trust with a reported value of \$b at the time of the transfer; (3) on Date 4,

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Taxpayer 2 transferred Life Insurance Policy 2 to the Trust with a reported value of \$c at the time of the transfer; (4) on Date 5, Taxpayer 2 transferred \$d to the Trust; (5) on Date 6, Taxpayer 2 transferred \$d to the Trust; (6) on Date 7, Taxpayer 2 transferred \$a to the Trust; and (7) on Date 8, Taxpayer 2 transferred \$e to the Trust.

In Year 3, Taxpayer 2 made the following transfers to the Trust: (1) on Date 9, Taxpayer 2 transferred \$d to the Trust; (2) on Date 10, Taxpayer 2 transferred \$a to the Trust; (3) on Date 11, Taxpayer 2 transferred \$d to the Trust; and (4) on Date 12, Taxpayer 2 transferred \$a to the Trust.

In Year 4, Taxpayer 2 made the following transfers to the Trust: (1) on Date 13, Taxpayer 2 transferred \$d to the Trust; (2) on Date 14, Taxpayer 2 transferred \$a to the Trust; (3) on Date 15, Taxpayer 2 transferred \$d to the Trust; and (4) on Date 16, Taxpayer 2 transferred \$a to the Trust. On Date 17, in Year 5, Taxpayer 2 transferred \$f to the Trust.

No gift tax returns were filed for Year 1, Year 2, Year 3, Year 4, and Year 5 and no allocation of Taxpayer 1's and Taxpayer 2's GST exemptions was made for transfers made to the Trust in those years. At the time the Trust was created, Taxpayer 1's and Taxpayer 2's accountant and Attorney 1 inadvertently failed to advise them of the need to allocate their GST exemptions for transfers to the Trust.

In Date 18, Taxpayer 1 and Taxpayer 2 requested Attorney 2 to review their estate plan. Attorney 2 discovered that no gift tax returns had been filed reporting the transfers to the Trust and that none of Taxpayer 1's or Taxpayer 2's GST exemptions had been allocated to the Trust for the transfers made to the Trust in Year 1, Year 2, Year 3, Year 4, and Year 5. Taxpayer 2 died on Date 19.

Taxpayer 1 and the estate of 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's and Taxpayer 2's respective GST exemptions for the transfers to the Trust in Year 1, Year 2, Year 3, Year 4, and Year 5; and (2) that the allocations shall be made based on the value of the property transferred to the Trust as of the respective dates of each of the transfers to the Trust.

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, Taxpayer 1 and the estate of Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer 1's and Taxpayer 2's available GST exemptions, with respect to the transfers to the Trust in Year 1, Year 2, Year 3, Year 4, and Year 5. The allocations will be effective as of the dates of the respective transfers to the Trust, and the gift tax values of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust.

These 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 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 the Trust.

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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 Taxpayer 1 and the estate of Taxpayer 2.

This ruling is directed only to the taxpayers 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