

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-105948-03
Date:
February 26, 2003

Re:

LEGEND:

- Taxpayer 1 =
- Taxpayer 2 =
- Date 1 =
- Trust =
- Year 1 =
- \$x =
- Accounting Firm =
- Date 2 =
- Date 3 =

Dear Sir:

This is in response to your representative's letter dated December 28, 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) exemptions.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer 1 established Trust, an irrevocable trust for the benefit of Taxpayer 1's daughter and her issue.

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Paragraph 2.1.1 of Trust provides that the trustee shall pay over the entire net income of the Trust not less often than quarter-annually to Taxpayer 1's daughter during her lifetime. Paragraph 2.1.2 provides that upon daughter's death, the trustee shall divide all of the Trust's principal, together with any accrued income, into separate equal shares so as to provide one share for each then living child of daughter and one share for the then living issue collectively of each deceased child of daughter.

Each of these shares established at daughter's death shall be held as a separate trust and the principal and income disposed of as follows. The trustee is authorized to pay to or apply for the benefit of a beneficiary from the net income of such beneficiary's share, amounts as they deem advisable for health, support, maintenance and education. After a beneficiary reaches 21 years, the trustee shall pay to or apply for the benefit of such beneficiary all of the net income from such share. The trustee is also authorized to pay to or apply for the benefit of a beneficiary from the principal of such beneficiary's share amounts to provide for health, support, maintenance and education of the beneficiary.

When a beneficiary of daughter reaches age 40, the trustee shall distribute 50 percent of the principal balance, together with any accumulated and accrued income to such beneficiary. When a beneficiary reaches age 45, the trustee shall distribute the entire balance of the principal to such beneficiary, together with any accumulated and accrued income. If a beneficiary dies prior to complete distribution of a share, the trustee shall distribute the remainder of the share in such amounts, among such beneficiary's issue as directed in such beneficiary's last will and testament.

In Year 1, Taxpayer 1 made transfers totaling \$x to Trust. It is represented that Accounting Firm prepared Taxpayer 1's and Taxpayer 2's Forms 709, "United States Gift (and Generation Skipping) Tax Returns for Year 1, reporting the transfers to Trust and the election by Taxpayer 1 and Taxpayer 2 to split gifts made by them to third parties during the calendar year under § 2513. Accounting Firm inadvertently failed to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to Trust. Taxpayer 1's and Taxpayer 2's Forms 709 were filed on or about Date 2.

Taxpayer 2 died on Date 3. Taxpayer 1 is a personal representative of Taxpayer 2's estate.

You have requested 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 GST exemptions for the transfers to Trust in Year 1.

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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. Section 2642(a) provides the method for determining the inclusion ratio.

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.

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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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, the time for making the allocation shall be treated as if not expressly prescribed by statute.

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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 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. You 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 respective available GST exemptions with respect to the transfer to Trust in Year 1. The allocations will be effective as of the date of the transfer to Trust, and the allocations will be made based on the value of the property transferred to Trust as of the date of the transfer.

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.

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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 the Taxpayers.

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