

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
March 13, 2003

LEGEND:

- Taxpayer 1 =
- Taxpayer 2 =
- Date 1 =
- Year 1 =
- Trust =
- \$x =
- Tax Return Preparer =
- Tax Attorney =
- Year 2 =
- Accounting Firm =

Dear :

This is in response to your representative's letter dated January 21, 2003, on behalf of Taxpayer 1 and Taxpayer 2, 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 Taxpayer 1's and Taxpayer 2's Generation-Skipping Transfer (GST) tax exemptions to a transfer to a trust.

The facts and representations submitted are summarized as follows: On Date 1 in Year 1, Taxpayer 1 and Taxpayer 2 established the Trust, an irrevocable trust for the benefit of their descendants. On the following day, Taxpayer 1 and Taxpayer 2 transferred property to the Trust. You represent that the value of this property was \$x.

The Trust specifically provides for Trust contributions to be fractionally divided: a portion equal to the transferor's unused GST exemption is directed to be allocated to a GST Exempt Trust, and the balance of the contribution, if any, is directed to be

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distributed per stirpes to Taxpayer 1 and Taxpayer 2's then living descendants. Until the death of the last to die of Taxpayer 1 and Taxpayer 2 (division date), the trustee is to hold the GST Exempt Trust for the benefit of their children.

Until the division date, the trustee may pay to any one or more of Taxpayer 1 and Taxpayer 2's children part or all of the income and principal of the GST Exempt Trust that the trustee, in the trustee's sole discretion, believes desirable for the best interests of the children. Any undistributed income of the GST Exempt Trust will be accumulated and from time to time added to principal.

As of the division date, the GST Exempt Trust will be divided and allocated per stirpes among the living descendants of Taxpayer 1 and Taxpayer 2, and property so allocated will be retained in trust as a separate trust for that descendant. Each exemption trust will be held and disposed as follows. The trustee will pay to or apply for the benefit of one or more of Taxpayer 1 and Taxpayer 2's descendants, such part or all of the income and principal of the trust as the trustee, in the trustee's sole discretion, believes desirable for the comfortable maintenance, health, education and welfare of the descendant. Any undistributed income of a trust will be accumulated and from time to time added to principal.

At the death of a child of Taxpayer 1 and Taxpayer 2, that child has the power to appoint the Trust principal and accrued or undistributed income to one or more of Taxpayer 1 and Taxpayer 2's descendants. On the death of a person for whom an exemption trust is named, any principal of the trust not effectively disposed of will be divided and allocated per stirpes among the living descendants of that person. When a grandchild or more remote descendant of Taxpayer 1 and Taxpayer 2 for whom a trust is named reaches the age of thirty years, or on the division date if such person then has reached that age, the balance of the trust will be distributed to such person.

Taxpayer 1 and Taxpayer 2 engaged Tax Return Preparer and Attorney to handle their tax matters. Year 1 Forms 709 for Taxpayer 1 and Taxpayer 2 were not filed because Attorney and Tax Return Preparer mistakenly believed the Year 1 transfer to the Trust qualified for the gift tax annual exclusion and mistakenly believed an allocation of GST exemption to the transfer was not required to fully exempt the transfer from the GST tax.

In Year 2, Taxpayer 1 and Taxpayer 2 engaged Accounting Firm as their tax return preparer. Accounting Firm reviewed Taxpayer 1's and Taxpayer 2's records and determined that the Year 1 transfer did not qualify for the gift tax annual exclusion and that an allocation of GST exemption to the Year 1 transfer was required to exempt the transfer from the GST tax.

You have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1's and Taxpayer 2's GST exemptions for the transfer to the Trust in Year 1, and that such allocation be made based on the value of the property transferred to the Trust on Date 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.

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

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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 the Trust on Date 1. The allocations will be effective as of the date of the transfer to the Trust, and the allocations will be made based on the value of the property transferred to the Trust as of the date of the transfer.

Because original Forms 709 were not filed for Year 1, Taxpayer 1 and Taxpayer 2 should file original Forms 709 reporting the Year 1 transfer to the Trust and allocating Taxpayer 1's and Taxpayer 2's available exemption to the transfer to the Trust. The Forms 709 should be filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each Form 709. Two copies are 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

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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 representatives listed on line 1 and line 2 of Form 2848, Power of Attorney and Declaration of Representative.

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

Two Copies of this letter