

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:9-PLR-165794-02
Date:
March 26, 2003

In Re:

LEGEND:

- Grantor =
- Spouse =
- Son =
- Daughter =
- Generation-Skipping Trust =

- GST-Exempt Trust 1 =

- GST-Exempt Trust 2 =

- Family Foundation =
- Accounting Firm =
- Attorney =
- Year 1 =
- Year 2 =
- a =

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Dear _____ :

This letter responds to your representative's letter, dated November 18, 2002, 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 timely allocations of generation-skipping transfer (GST) exemption with respect to transfers made by Grantor to an irrevocable trust.

The facts and representations submitted are summarized as follows: Grantor is married to Spouse and has two children, Son and Daughter. In Year 1, Grantor created Generation-Skipping Trust, an irrevocable trust, for the benefit of his children and, after their death, for the benefit of his grandchildren. Grantor transferred stock valued at \$a to Generation-Skipping Trust in Year 1.

Article Two of Generation-Skipping Trust provides for the creation of two separate trusts: GST-Exempt Trust 1, to be held and administered for the primary benefit of Son, and GST-Exempt Trust 2, to be held and administered for the primary benefit of Daughter.

Article Three, paragraph one of Generation-Skipping Trust provides that the trustee shall pay to or for the benefit of the beneficiary of GST-Exempt Trust 1 and GST-Exempt Trust 2, so much, if any, of the net income or principal of that trust as the trustee, in the trustee's sole and absolute discretion, shall deem necessary or advisable for the beneficiary's support in his or her accustomed manner of living, education, including college and professional education, health and medical, dental, hospital and nursing expenses and expenses of invalidism. Article Three, paragraph one clarifies Grantor's intent that all or part or none of the net income or principal may be paid to each trust's beneficiary.

Article Three, paragraph three of Generation-Skipping Trust provides that the beneficiary of GST-Exempt Trust 1 and GST-Exempt Trust 2 shall have the power to appoint all or any portion of the principal of his or her trust to or for the benefit of Grantor's issue, in the amounts or proportions, whether absolute or in trust, as that beneficiary shall direct by specific reference to the non-general power of appointment in his or her will. However, this beneficiary is prohibited from appointing trust property to himself or herself, his or her estate and creditors, or creditors of his or her estate.

Article Three, paragraph four of Generation-Skipping Trust provides that GST-Exempt Trust 1 and GST-Exempt Trust 2 will terminate on the death of its primary beneficiary. Article Three, paragraph four further provides that upon termination of GST-Exempt Trust 1 or GST-Exempt Trust 2, the then remaining principal and income of that trust that has not been effectively appointed under the non-general power of appointment granted in paragraph three of Article Three shall be held or disposed of as follows:

- A. If any issue of the beneficiary is living at the termination of that beneficiary's trust, then the trustee shall divide the trust property into equal shares for the

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living issue of that beneficiary and, collectively, the living issue of each child of that beneficiary who dies prior to the termination of the trust leaving issue then living.

- B. If no issue of the beneficiary is living at the termination of the trust, and if any issue of Grantor is then living, then the trustee shall divide the trust property into equal shares per stirpes for the benefit of the issue of Grantor.
- C. If no issue of the beneficiary or Grantor is living at the termination of the trust, then the trustee shall transfer the trust property to Foundation if it then exists, or if it shall not then exist, to the successor in ownership of the assets of Foundation.

Article Four, paragraph two of Generation-Skipping Trust provides that GST-Exempt Trust 1 and GST-Exempt Trust 2 shall terminate on the first to occur of the following dates with respect to each trust: (A) the date the primary beneficiary attains the age of forty years; (B) the date which is twenty-one years after the death of the last to die of the issue of Grantor living as of the date of this agreement; or (C) the date the primary beneficiary dies.

Grantor and Spouse forwarded to Accounting Firm a copy of the trust agreement for Generation-Skipping Trust and informed Accounting Firm of the gifts made in Year 1 and of Spouse's consent to have gifts made by Grantor considered as made one-half by each of Spouse and Grantor. Grantor and Spouse state that they relied on Accounting Firm to make the appropriate allocations on properly prepared gift tax returns. On Form 709 for Year 1, Accounting Firm failed to allocate any of Grantor's or Spouse's GST exemption to the transfers.

In Year 2, Grantor and Spouse consulted with Attorney to review their estate plan. Attorney reviewed the wills and trusts of Grantor and Spouse and all Forms 709 filed on their behalf. Attorney discovered that no GST allocation had been made to the transfer to Generation-Skipping Trust in Year 1.

No distributions from any of the trusts have been made to a skip person.

Grantor and Spouse request an extension of time under § 301.9100-3 to allocate their GST exemption to the transfer to Generation-Skipping Trust.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a)(1) provides, generally, that the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust where the property passes to a skip person with respect to the transferor of the property. Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person other than a taxable termination or

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a direct skip. Section 2612(c)(1) provides that a “direct skip” is a transfer subject to federal estate or gift tax made by a transferor to a skip person.

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 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 transfer 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)-- (A) 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 (B) 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, 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.

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Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in § 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 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. Therefore, Grantor and Spouse are granted an extension of time of sixty (60) days from the date of this letter to make retroactive allocations of their available GST exemption with respect to the transfer to Generation-Skipping Trust in Year 1. The allocation will be effective as of the date of the transfer to the trust in Year 1, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to the trusts. The allocations should be made on a supplemental Form 709 for each taxpayer filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. Two copies are enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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 trusts.

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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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayers' representative.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
(2) Copies of this letter

cc: