

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4-PLR-143815-02

Date:  
APRIL 17, 2003

Re:

Legend:

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Grantor =
- Grantor's Spouse =
- Executor =
- Trust 1 =
- Trust 2 =
- Trust 3 =
- Law Firm =
- \$ X =
- \$ Y =
- State =
- Year 1 =
- Year 2 =
- Partnership =

Dear :

This is in response to your letter dated February 13, 2003, and prior correspondence in which you request an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an allocation of the Generation-Skipping Transfer (GST) exemption.

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The facts and representations submitted are summarized as follows: On Date 1, Grantor and Grantor's Spouse (the Grantors) established three irrevocable trusts, Trust 1, Trust 2, and Trust 3 (the Trusts) for the benefit of Grantors' children and their descendants. The sole assets transferred to the Trusts were partnership interests in Partnership.

Article I, paragraph 2.2(a) provides that so long as the income beneficiary is living, the trustee will pay part or all of the income or corpus, or both, of the trust as trustee deems proper for the support, benefit, comfort and happiness of the income beneficiary, accumulating and adding to corpus any income not used. However, if at any time the income beneficiary or a contributor to the trust is acting as trustee, then that person can not make or participate in the making of any decision with regard to payments or distributions to the income beneficiary from income or corpus other than for the income beneficiary's support.

Article I, paragraph 2.2(b) provides generally that on the death of an income beneficiary, the trustee will continue to hold, or pay over the corpus of the trust as the income beneficiary will, in accordance with the terms and provisions of the trust, by will appoint. In default of the exercise of such power of appointment, the trustee will allocate the corpus of the trust, per stirpes, among the then living descendants of the income beneficiary, if there are no descendants then the corpus is to be distributed, per stirpes, among the then living descendants of the income beneficiary's nearest lineal ancestor who is a settlor or a descendant of the settlors, and has descendants then living, and if there are none, the trustee is to distribute the corpus in accordance with paragraph 2.3.

Article I, paragraph 2.3 provides generally, that if there are no living descendants then one-half of the corpus will be distributed to persons living thirty days after the death that terminated the trust to those who would take Grantor's personal property under the laws of descent and distribution of State if Grantor had died unmarried and intestate. The other one-half of the corpus is to be distributed to persons living thirty days after the death that terminated the trust who would take Grantor's Spouse's personal property under the laws of descent and distribution of State if Grantor's Spouse had died unmarried and intestate.

Article 3, paragraph 3.5 provides that all trusts established under the instrument must terminate no later than twenty-one years, less one day, after the last to die of the Grantors and those of Grantors' descendants living at the execution of the trusts.

On Date 2, in Year 1, Grantor and Grantor's Spouse transferred Partnership interests with a value of \$X to each of the Trusts. On Date 3, in Year 2, Grantor and Grantor's Spouse transferred Partnership interests with a value of \$Y to each of the trusts. Grantor and Grantor's Spouse each filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns on Date 4 for Year 1 and on Date 5 for Year 2. On the returns, the parties consented to treat the gifts to the Trusts as having been made one-half by each under § 2513. An accountant prepared the returns. However, with respect to the returns filed for both Year 1 and Year 2, insufficient exemption was allocated to the Trusts to maintain a zero inclusion ratio under § 2642(a). Grantor died on Date 6.

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While updating Grantor's Spouse's estate plan, Law Firm reviewed copies of Grantor's and Grantor's Spouse's Forms 709 and determined that insufficient GST tax exemption had been allocated to the Trusts such that the Trusts' inclusion ratios were greater than zero.

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.

Under § 2642(a)(1), the inclusion ratio with any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the 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)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) 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 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2652(a)(2) provides that, if under § 2513, one-half of a gift is treated as made by the individual, and one-half is treated as being made by the individual's spouse, then such gift shall be so treated for GST tax purposes.

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

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the time of the close of the estate tax inclusion period. 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 this paragraph.

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.

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 not 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 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. Notice 2001-50, 2001-34 I.R.B. 189, 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.

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,

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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 Grantor's Spouse are granted an extension of time of 60 days from the date of this letter to make allocations of their available GST exemption, with respect to the transfers to the Trusts on Date 3 and Date 4. The allocations will be effective as of Date 3 and Date 4, the dates of the transfers to the Trusts in Year 1 and Year 2, and the inclusion ratio under § 2642(a) will be determined based on the value of the transfers to the Trusts as finally determined for federal gift tax purposes.

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.

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. This election 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, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: