

**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-106527-03

Date:

April 30, 2003

In Re:

LEGEND:

Trust =

Taxpayer =

Daughter =

Company =

Accountant =

Tax Advisor =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

\$a =

\$b =

Dear Sir:

This is in response to your letter dated January 13, 2003, and subsequent correspondence, 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's generation-skipping transfer (GST) tax exemption to certain transfers to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1, Taxpayer formed the Trust for the benefit of Daughter and her issue.

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Paragraph 3(a)(1) of the Trust provides that during Daughter's life, trustee is to pay Daughter as much of the Trust's net income as is necessary to provide for Daughter's education or maintenance in health and reasonable comfort. Pursuant to Paragraph 3(a)(2), during Daughter's life, Daughter's issue are to receive as much of the Trust's net income as is necessary to provide for their maintenance, health, and education, with no requirement of equalization among beneficiaries. Income not distributed is to be added to principal.

Paragraph 4 provides that trustee is to distribute to Daughter and her issue as much trust principal as is necessary to provide for their maintenance in health and reasonable comfort, support in the accustomed manner of living, and education, including college and professional education.

Paragraph 3(b) provides Daughter with a testamentary limited power to appoint the Trust's remaining net income and principal in her will among Daughter's spouse and issue.

Paragraph 3(c)(1) provides that any unappointed trust income and principal is to be held in further trust for the benefit of Daughter's issue. Trustee is to distribute to Daughter's issue as much of the Trust's net income as is necessary to provide for their education, support, and maintenance, according to need and with no requirement of equalization among beneficiaries. Income not distributed is to be added to principal.

Paragraph 3(c)(2) provides that the Trust will terminate 21 years after the death of the last to die of Daughter and Taxpayer's more remote issue alive on Date 1, and be distributed to Daughter's then living issue, per stirpes. If Daughter is not survived by issue, the Trust's remaining assets will be distributed to Taxpayer's then living issue.

On Date 1, Taxpayer transferred Company stock with a reported value of \$a to the Trust. On Date 2, Taxpayer transferred \$b to the Trust. The transfers on Dates 1 and 2 occurred in Year 1. Taxpayer retained Accountant to prepare his Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Accountant, however, inadvertently failed to prepare and file Taxpayer's Year 1 Form 709. As a result, Taxpayer's GST exemption was not allocated to the Year 1 transfers to the Trust.

In Year 2, Taxpayer's Tax Advisor discovered Accountant's inadvertent failure to file Taxpayer's Year 1 Form 709. On Date 3, Taxpayer filed a Year 1 Form 709 reporting the Year 1 transfers to the Trust. Taxpayer has represented that he has sufficient remaining GST exemption available to apply to the Year 1 transfers to the Trust.

Taxpayer has requested an extension of time under §§ 2642(g)(1) and 301.9100-3 to make an allocation of Taxpayer's GST exemption to the Date 1 and Date 2 transfers to the Trust, and that such allocations will be based on the value of the property transferred to the Trust on Date 1 and Date 2, respectively, so that Trust will have a

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zero inclusion ratio for GST tax purposes.

#### LAW and ANALYSIS:

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), as in effect for Year 1, 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.

As applicable during the year at issue, § 2642(b)(1) provided 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) – (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).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this

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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. Section 2642(g)(1)(B) further provides that 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 § 2624(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 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) 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 is granted an extension of time of sixty (60) days from the date of this letter to allocate Taxpayer's available GST exemption to the transfers Taxpayer made to the Trust on Date 1 and Date 2. The allocations will be effective as of Date 1 and Date 2, respectively, and the gift tax value of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust. The Trust will have an inclusion ratio of zero,

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provided the amount of GST exemption allocated to the Trust is equal to the amount transferred to the Trust for federal gift tax purposes.

The allocations should be made on a supplemental Form 709 for Year 1 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.

The rulings contained in this letter are based upon information and representations submitted by 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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding the value of property transferred to the Trust for federal transfer tax purposes.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

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  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: Copy for § 6110 purposes  
One copy of this letter