

**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-167482-02  
Date:  
AUGUST 07, 2003

Re:

LEGEND:

- Decedent -
- Trust -
  
- Accountant -
- Date 1 -
- Date 2 -
- Date 3 -
- Date 4 -
- Date 5 -
- Year 1 -
- Year 2 -
- Year 3 -
- Year 4 -
- Year 5 -
- Year 6 -
- Amount 1 -
- Amount 2 -
- Amount 3 -
- Amount 4 -
- Amount 5 -
- Amount 6 -
- Amount 7 -
- Amount 8 -
- Amount 9 -
- Amount 10 -
- Amount 11 -

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Dear \_\_\_\_\_ :

This is in response to your letter dated June 5, 2003, and prior correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: Decedent created Trust on Date 1. The trust instrument provides that the trustee has the authority during the Decedent's lifetime to purchase and maintain insurance on the Decedent's life. Until Trust is divided (as discussed below) the trustee is authorized to pay to or apply trust income for the benefit of Decedent's children and grandchildren. One year after Decedent's death, Trust is to be divided into equal shares, one share for each child of the Decedent then living and one share for each deceased child having a descendant then living. Each child's trust may pay to or for the benefit of the child (or any of the child's descendants) as much of the net income of the child's trust as the trustee may deem appropriate for any purpose. In addition, the trustee may pay to or for the benefit of the child as much of the principal as the trustee may deem appropriate for the child's support and health. The trustee may also pay to or for the benefit of the child's descendants as much of the principal as the trustee deems appropriate for the grandchild's (or more remote descendant's) support, health, and education. The trust instrument provides that if any portion of the child's trust is a GST nonexempt trust and the child dies with surviving descendants, the child is granted a general power of appointment over the GST nonexempt trust. Except as the child dictates by that general power of appointment, the child's trust passes to or for the benefit of the child's descendants, per stirpes, at the child's death. In addition, pursuant to Trust's terms, whenever a contribution is made to Trust by the Decedent or any other person, the Decedent's grandchildren are granted a right to withdraw a portion of the contribution, determined based on a specified formula.

Decedent transferred Amount 1 in cash to Trust in Year 1 and Amount 2 in Year 2. No Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, was filed for Year 1. A Form 709 was filed for Year 2, but did not report the gifts to Trust. In a letter dated Date 2, the Decedent's attorney advised Decedent that Accountant should prepare a Form 709 for Year 1 and an amended Form 709 for Year 2 to make GST exemption allocations for the Year 1 and Year 2 gifts to Trust. On Date 3, the Forms 709 were filed. However, in preparing the Forms 709, Accountant failed to allocate Decedent's GST exemption effectively to Trust.

In Year 3, Decedent transferred Amount 3 to Trust. A Form 709 was filed, however, Accountant incorrectly believed that the transfer would not be subject to GST tax to the extent it qualified for the gift tax annual exclusion. Accordingly, Accountant believed Amount 4 was excluded for GST tax purposes, and that no GST allocation was necessary for that amount. Therefore, Accountant only allocated Amount 5 of Decedent's GST exemption to Trust for the Year 3 gift. Accountant similarly prepared a

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Form 709 for the years Year 4, Year 5, and Year 6. Specifically, in Year 4 Decedent contributed Amount 6, but only Amount 7 of Decedent's GST exemption was allocated to Trust. In Year 5, Decedent transferred Amount 8 to Trust, but only Amount 9 of Decedent's GST exemption was allocated to Trust. Finally, in Year 6 Decedent transferred Amount 10 to Trust and only Amount 11 of Decedent's GST exemption was allocated to Trust.

Decedent died on Date 4. At the time of his death, Decedent had three children and eight grandchildren. No grandchild exercised his or her withdrawal power with respect to gifts to Trust, and no grandchild has received any other distribution from Trust.

Shortly after Decedent's death, the attorney for Decedent's estate notified the executor that the gift tax returns for Year 1 through Year 6 contained GST tax exemption allocation errors. The Executor requests rulings that (1) an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 will be granted to make allocations of Decedent's GST exemption to Trust for Decedent's transfers to Trust in Year 1 through Year 6; and (2) that such allocations will be effective as of the original transfer dates so that Trust has an inclusion ratio of zero.

Decedent's estate filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, on Date 5. On the return Decedent's GST exemption was allocated in a manner consistent with these ruling requests.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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 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.

Under § 2642(a)(1), the inclusion ratio with respect to 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 the GST exemption 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 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 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.

Notice 2001-50, 2001-2 C.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 transfer 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.

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.

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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.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent's estate is granted an extension of time of 60 days from the date of this letter to make an allocation of Decedent's available GST tax exemption, with respect to Decedent's transfers to Trust in Year 1 and Year 2, and to allocate additional GST exemption with respect to Decedent's transfers to Trust in Year 3, Year 4, Year 5, and Year 6. The allocations will be effective as of the respective dates of the transfers to Trust, and the inclusion ratio of Trust will be determined based on the value of the transfers to Trust as determined for federal gift tax purposes and the amount of exemption allocated to the Trust.

These allocations should be made on supplemental Forms 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709.

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.

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This ruling is directed only to the taxpayer 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 section 6110 purposes  
Copy of this letter

CC: