

**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-133910-03

Date:  
September 12, 2003

In Re:

LEGEND:

- Taxpayer =
- Spouse =
- Trust Agreement =
- Trust 1 =
- Trust 2 =
- Trust 3 =
- Company =
- Accounting Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Year 1 =
- Year 2 =
- a =
- b =

Dear :

This is in response to your letter dated May 28, 2003, and subsequent correspondence, in which you requested, on behalf of the Taxpayer, an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Taxpayer's generation-skipping transfer (GST) tax exemption to transfers to an irrevocable trust.

A summary of the facts and representations submitted is as follows. On Date 1,

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Taxpayer's spouse (Spouse) executed a trust agreement (Trust Agreement) that provides that the initial trust property be divided into three equal shares and held as three separate trusts for the benefit of each of Taxpayer and Spouse's three children (Trusts 1, 2, and 3).

Article Second, Paragraph A of Trust Agreement provides the trustees of Trusts 1, 2, and 3 with the discretion to distribute trust net income and principal to the child for whom the trust was established (primary beneficiary) and the primary beneficiary's issue. There is no requirement to equalize distributions among beneficiaries. Any undistributed net income is to be added to principal.

Article Second, Paragraph B provides that upon the primary beneficiary's death, his or her trust's remaining property is to be distributed as the primary beneficiary appoints in his or her will, among Spouse's issue, other than the primary beneficiary. Trust property not effectively appointed is to be distributed to the primary beneficiary's issue, by right of representation, if any; if none, to Spouse's then living issue, by right of representation. Any trust property passing to a person under age 45 is to be held in further trust and administered in accordance with Article Third.

Under Article Third, the trustees of a trust established for a beneficiary under age 45 have the discretion to distribute trust net income and principal to the beneficiary. The beneficiary is to receive one-third of the trust's net income and principal upon attaining age 35, one-half of the trust's net income and principal upon attaining age 40, and the remaining trust net income and principal upon attaining age 45. In the event the beneficiary dies prior to attaining age 45, the trust's property is to be distributed as the beneficiary appoints in a will executed after Spouse's death. Trust property not effectively appointed is to be distributed to the beneficiary's living issue, by right of representation, if any; if none, to the living issue of the beneficiary's ancestor who was Spouse's child, by right of representation, if any; if none, to Spouse's living issue, by right of representation. Article Third further provides that the trusts are to terminate no later than 21 years after the death of the survivor of all persons named in the Trust Agreement and their issue who were alive on Date 1.

Taxpayer has represented that in Years 1 and 2 she relied upon Accounting Firm to prepare her individual tax returns. Taxpayer also relied on the family's tax, estate planning, and financial advisor to provide Accounting Firm with the necessary information in order for Accounting Firm to prepare her individual tax returns.

On Date 2 in Year 1, Spouse transferred a shares of Company stock to each of the three trusts. On Date 3 in Year 2, Spouse transferred b shares of Company stock to each of the three trusts. Taxpayer retained Accounting Firm to prepare her Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1 and Year 2. On these returns, Taxpayer elected to treat Spouse's transfers in Years 1 and 2 as being made

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one-half by each pursuant to § 2513. Through an oversight, the tax professionals retained by Taxpayer failed to allocate Taxpayer's GST exemption to the transfers made to Trusts 1, 2, and 3 on Dates 2 and 3.

On Date 4, Spouse's attorney, who drafted the Trust Agreement, discovered the failure to allocate Taxpayer's GST exemption to the transfers to the trusts. Taxpayer represents that she currently has sufficient GST exemption to allocate to the transfers made on Date 2 and Date 3.

Taxpayer requests an extension of time under §§ 2642(g)(1) and 301.9100-3 to allocate her GST exemption to the transfers to Trusts 1, 2, and 3 on Dates 2 and 3, and a ruling that such allocations will be based on the value of the property transferred to Trusts 1, 2, and 3 on Dates 2 and 3.

#### 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 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)) 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 to transfers during Year 1 and Year 2, § 2642(b)(1) provides in relevant part that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] –

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(A) the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

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 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, the time for making the allocation shall be treated as if not expressly prescribed by statute.

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

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 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.

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

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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 her available GST exemption to the transfers to Trusts 1, 2, and 3 on Dates 2 and 3. The allocations will be effective as of Dates 2 and 3 and will be made based on the value of the property transferred to the trusts as of the dates of the transfers. The allocations should be made on Supplemental Forms 709 for Years 1 and 2 and 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 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

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property Spouse transferred to Trusts 1, 2, and 3 on Dates 2 and 3 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 the Taxpayer.

This ruling is directed only to Taxpayer, the party 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  
Two copies of this letter

cc: