

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID #

Telephone Number:

Re: Private Letter Ruling Request

Refer Reply To:

CC:PSI:B09 – PLR-101786-03

Date:

November 18, 2003

Legend

Date 1 =

Taxpayer =

Trust =

Daughter =

\$a =

Date 2 =

Year 1 =

Accountant =

Dear Mr. :

This is in response to your authorized representative's letter dated November 21, 2002, 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 an allocation of Taxpayer's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer created Trust for Daughter and her descendants and funded Trust with assets valued at \$a. On Date 2, the trust's advisory committee amended Trust in order to remove Daughter as a beneficiary.

Under the terms of Trust, as amended on Date 2, the trustee is directed to segregate the trust estate into eight separate trusts, with one share to be held for each of Taxpayer's seven grandchildren, and the remaining share to be held for the husband of one of Taxpayer's granddaughters. With regard to each separate trust, the trustee is permitted to accumulate the net income and add it to principal, or to pay to or apply for the benefit of the beneficiary for whom the trust was created so much of the income and principal of the trust to the as the trustee deems necessary to provide for the beneficiary's health, support, maintenance, and education. Alternatively, the trustee may distribute so much of the income and principal of each trust to or for the benefit of one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the trustee deems advisable. The trustee is also permitted to sever any beneficiary's trust into a GST-Exempt Trust and a GST Nonexempt Trust.

Taxpayer, who was not a tax professional, relied upon Accountant for advice regarding income and transfer tax matters. Accountant erroneously believed that Taxpayer did not need to allocate any of his GST exemption to the Date1 transfer to Trust because the transfer was excluded from gift tax pursuant to § 2503(b). Consequently, no Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, was filed for Year 1 and no allocation of Taxpayer's GST exemption was made for the Date 1 transfer to Trust.

Taxpayer represents that no additions have been made to Trust since Date 1 and that he currently has sufficient GST exemption available to make an allocation of \$a to the Date 1 transfer to Trust.

Taxpayer now requests an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make an allocation of his GST exemption with respect to the assets transferred to Trust on Date 1, based on the Date 1 value of the assets.

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 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 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 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) – (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 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, 2001-34 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.

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 Internal Revenue 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, Taxpayer is granted an extension of time of 60 days from the date of this letter to make an allocation of Taxpayer's available GST exemption with respect to Taxpayer's transfer to Trust on Date 1. The allocation will be effective as of the date of the transfer to Trust, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated to the trusts. Therefore, the GST exemption allocation will be based on the value of the transfer to Trust as of the date of the original transfer.

The allocation should be made on a Form 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 709. A copy is 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. In addition, we express or imply no opinion regarding the value of the property transferred to Trust.

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.

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

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.

Sincerely,

Heather C. Maloy

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures

Copy for § 6110 purposes
Copy of this letter