

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

In Re:

Refer Reply To:
CC:PSI:B09 / PLR-112397-04

Date:
June 18, 2004

LEGEND:

Taxpayer =

Trust =

Date 1 =

x =

Son =

Attorney =

Year 1 =

Accountant =

Year 2 =

Dear _____ :

This is in response to your letter dated February 4, 2004, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: Taxpayer created Trust on Date 1, funding it with a contribution of \$x in cash. Trust is an irrevocable trust for the primary benefit of Son and Son's descendants.

Article III(A) of the trust agreement provides that that the trustee shall pay to Son, until the first to occur of (i) Son attaining the age of twenty-five or (ii) the death of Taxpayer, such amounts of the net income of the trust as the trustee deems advisable to provide for Son's maintenance, support, health and education.

Article III(B) provides that from the time Son attains the age of twenty-five, and continuing so long as both Son and Taxpayer are living, the trustee shall pay to Son the entire net income of the trust.

Article III(C) provides that from the death of Taxpayer, and continuing so long as Son is living and under thirty-two years of age, the trustee shall accumulate all of the net income of the trust and add it to, and invest it as a part of, the principal thereof.

Article III(D) provides that after the last to occur of (i) Son attaining the age of thirty-two or (ii) the death of Taxpayer, the trustee shall pay to any one or more of the group comprised of Son and Son's living descendants such amounts of the net income of the trust as the trustee may deem advisable to provide for their maintenance, support, health and education.

Article III(E) provides that upon the death of Son, the trustee shall distribute the remaining principal to or for the benefit of any one or more of Son's descendants and/or in trust for the benefit of the widower of Son, in the proportions as Son may have designated and appointed by Will; provided, however, that no exercise of such power in favor of the widower of Son shall be effective unless the interest is limited to the right to receive income. If Son fails to effectively exercise the power of appointment to dispose of the principal of the trust or any portion thereof, then upon his death, such principal or portion shall be distributed to his then living descendants, per stirpes, and if there are none, to the living descendants of Taxpayer and Taxpayer's spouse, and if there are none, to the living descendants of Taxpayer.

Potential beneficiaries include individuals who are two or more generations below Taxpayer's generation; therefore, distributions from Trust may be subject to the GST tax.

The trust agreement was prepared by Attorney in Year 1. Attorney advised Taxpayer of the benefit of allocating Taxpayer's GST tax exemption to the transfer. Taxpayer engaged Accountant to prepare his income and other tax returns. Taxpayer was under the belief that Attorney and Accountant would properly coordinate Taxpayer's financial information. However, due to inadvertence, a timely Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) reporting Taxpayer's transfer to Trust was not filed. This failure to file was discovered in Year 2. Accountant then prepared a Form 709 for Year 2 that allocated Taxpayer's available GST tax exemption to Trust using the fair market value of the trust assets on the date of allocation.

Taxpayer requests an extension of time to make an allocation of his GST tax exemption under § 2642(g) with respect to the assets transferred to Trust in Year 1. In addition, Taxpayer requests that the allocation be based on the value of the assets

transferred to the trust as of the date of the transfer so that Trust has an inclusion ratio of zero.

Section 2601 imposes a tax on every 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) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST tax 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 2632(a)(1) provides that any allocation by an individual of his or her GST tax 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 tax 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, 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 tax 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 tax 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 GST 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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 to 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 file a supplemental Form 709 for the Year 1 transfer to Trust. The Form 709 should include a Notice of Allocation properly allocating Taxpayer's GST tax exemption to the transfer in Year 1. The allocation will be effective as of the date of the transfer, and the gift tax value of the transfer to Trust will be used in determining the amount of GST tax exemption to be allocated to the trust. A copy of this letter should be attached to the supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is included for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Pursuant to 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

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