

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

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Date:
December 08, 2004

Legend:

Taxpayer =

Trust =

Date 1 =

Date 2 =

a =

Date 3 =

b =

Year 1 =

Date 4 =

Year 2 =

c =

Date 5 =

Year 3 =

d =

Dear :

This is in response to your letter dated June 1, 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 allocations of Taxpayer's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Taxpayer established the Trust on Date 1 for the benefit of Taxpayer's spouse, Taxpayer's issue, and the issue of Taxpayer's spouse.

On Date 2, Taxpayer transferred cash and marketable securities with a value of \$a to the Trust. On Date 3, Taxpayer transferred cash and marketable securities with a

value of \$b to the Trust. Date 2 and Date 3 are in Year 1. On Date 4 (in Year 2), Taxpayer transferred cash and marketable securities with a value of \$c to the Trust. On Date 5 (in Year 3), Taxpayer transferred cash and marketable securities with a value of \$d to the Trust.

Article I of the Trust provides, in relevant part, that the trustee has the discretion to distribute net income and principal to or for the benefit of any one or more of Taxpayer's spouse, Taxpayer's issue, and the issue of Taxpayer's spouse. Upon the death of Taxpayer's spouse, the trust will be divided into the number of equal shares necessary to provide one such share for each of four named beneficiaries who are either then living or not then living but have issue who are then living. Upon the death of a named beneficiary, the remaining principal of the trust held in that beneficiary's name shall be distributed to the beneficiary's surviving issue per stirpes. Notwithstanding any provision of the trust agreement to the contrary, each trust created under Article I shall terminate not later than twenty-one years after the death of the last survivor of all of the issue of each of Taxpayer's parents and each of Taxpayer's spouse's parents who were in being on Date 1. Upon such termination, the remaining principal of each trust shall be distributed to the primary beneficiary of the trust.

Taxpayer was advised by the attorney who drafted the trust agreement that GST exemption would need to be allocated to transfers made to the Trust. Taxpayer provided his accountant with the information received from the attorney and relied upon the accountant to prepare the appropriate gift tax returns. Taxpayer's accountant inadvertently failed to allocate Taxpayer's GST exemption on the gift tax returns.

Taxpayer has requested an extension of time to allocate his GST exemption to the transfers made to the Trust during Year 1, Year 2, and Year 3.

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 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 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

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, 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 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 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 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 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 make allocations of Taxpayer's available GST exemption with respect to the transfers to the Trust in Year 1, Year 2, and Year 3. The allocations will be effective as of the date of the transfers, 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 Trust. The allocations should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. 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. In addition, we express or imply no opinion regarding the value of the property transferred to the Trust.

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 the taxpayer's representative.

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 & Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of letter