

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04 – PLR-142862-03

Date: JANUARY 20, 2004

LEGEND:

Settlor	=
Estate	=
Trust 1	=
Trust 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year 1	=
Daughter 1	=
Daughter 2	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Grandchild 4	=
Grandchild 5	=
Company	=
Attorney 1	=
Attorney 2	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=

Dear :

PLR-142862-03

This is in response to your letter dated June 23, 2003, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are as follows:

On Date 1, Settlor created two trusts, Trust 1 and Trust 2 and transferred \$a in cash to each trust.

Article I, Paragraph A of Trust 1 provides that the primary beneficiaries of this trust shall be Settlor's daughter, Daughter 1, and her two children Grandchild 1 and Grandchild 2.

Article IV, Paragraph B provides, in part, that during the lifetime of Daughter 1, the Trustee shall distribute from the trust to or for the benefit of the beneficiaries such amounts as the Trustee determines to be reasonably necessary or advisable for the support, welfare, maintenance, and health of the beneficiaries, and to enable them to enjoy a standard of living and comfort suitable to their station in life. Distributions during the lifetime of Daughter 1 shall not ordinarily exceed the net income of the trust, although distribution of principal is expressly authorized if the Trustee determines such to be appropriate or necessary to carry out the purposes of the trust. In determining the amount and timing of distributions, the Trustee shall take into account other funds available to the beneficiaries, but need not treat that factor as controlling, particularly if to do so would result in substantially unequal treatment of beneficiaries. During the lifetime of Daughter 1, distributions from the trust shall be mainly to her, but this shall in no way limit the power of the trustee to make distributions to Grandchild 1 and 2, and distributions to grandchildren are expressly authorized if the trustee determines such course to be in the best interests of the family group.

Article IV, Paragraph C provides that after the death of Daughter 1, the current net income of the trust shall be distributed, in equal shares, to such of the other beneficiaries as are living at the time of a distribution. Distribution shall be in convenient installments at least quarter-annually. After such distribution of income commences, distributions of principal may be made to any one or more of the beneficiaries for any of the purposes set forth in Paragraph B of the Article, but shall be made only if, in the judgment of the Trustee, other funds available to a beneficiary are inadequate to provide for such needs.

Article X, Paragraph A provides that this trust shall terminate on the death of the last surviving beneficiary of the trust.

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Article X, Paragraph D provides that on termination of the trust, the trust corpus is to be distributed to charities listed in the Article.

Article XIII, Paragraph A provides that if part, but not all, of the trust is exempt from generation-skipping tax as the result of the allocation of the generation-skipping tax exemption under section 2631(a), then such exempt portion is to be held in a separate share of the trust to be known as the "Exempt Share," and the rest of the trust corpus passing to the trust is to be held in another separate share to be known as the "Nonexempt Share."

Trust 2 is identical to Trust 1, except that the primary beneficiaries of Trust 2 are Daughter 2, and her three children Grandchild 3, Grandchild 4, and Grandchild 5.

On Date 2, Settlor made a gift of b shares of Company stock (valued at \$c) to each trust. On Date 3, Settlor made a gift of d shares of Company stock (valued at \$e) to each trust. Date 1, Date 2, and Date 3 all occurred during Year 1.

Settlor hired Attorney 1 to prepare the trusts and the Form 709, United States Gift (and Generation-Skipping Tax) Return for the gifts made to the trusts. Attorney 1 had years of experience in preparing trusts and gift tax returns. Attorney 1 timely filed the Form 709 on Date 4, but failed to effectively allocate Settlor's GST exemption to Trust 1 and Trust 2.

While reviewing Settlor's estate plan shortly before Settlor's death, Attorney 2 discovered that GST exemption had not been properly allocated to Trust 1 and Trust 2. Settlor died on Date 5. No distributions from Trust 1 or Trust 2 have been made to Settlor's grandchildren.

You have requested an extension of time under section 2642(g) of the Internal Revenue Code and section 301.9100-3 to make allocations of Settlor's available GST exemption to Trust 1 and Trust 2.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under section 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means, with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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Under section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess (if any) of 1 over the "applicable fraction." The applicable fraction, as defined in section 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 of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect prior to January 1, 2004, 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 section 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 section 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of GST exemption under section 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 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.

Section 2642(b)(1) provides that, except as provided in section 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 section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1)-- (A) the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 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 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 section 2642(b)(1) or (2), and an election under section 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.

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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 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 section 2642(g)(1)(B), the time for allocating 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 section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 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 sections 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 section 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 section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 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 section 301.9100-3 have been satisfied. Therefore, the executor of

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Settlor'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 1 and Trust 2 in Year 1. The allocations will be effective as of the respective dates of the transfers to the two trusts, and the inclusion ratio with respect to each trust will be determined based on the gift tax value of the transfers to the two trusts and the amount of exemption allocated to each trust.

These allocations should be made on a supplemental Form 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 Form 709. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and to the taxpayer's other authorized representative.

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.

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.

This ruling is directed only to the taxpayer(s) 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 of letter for section 6110 purposes
Copy of this letter