

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-119221-02

Date:

May 31, 2002

LEGEND:

Date 1 =

Taxpayer =

Spouse =

Trust =

A =

Year 1 =

B =

Date 2 =

Dear :

This is in response to your authorized representative's letter dated November 29, 2001, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer's husband, Spouse, established the Trust, an irrevocable trust, for the benefit of his children and grandchildren.

On Date 1, Taxpayer and Spouse transferred real estate and related leases to the Trust. The real estate and related leases were valued at \$A on Taxpayer's Year 1 gift tax return.

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Article III of the Trust provides that Spouse's purpose in establishing the Trust is to provide his children with income during their lives, and upon the death of each of his children to provide income to their children, Spouse's grandchildren, until the Trust terminates.

Article V.a. of the Trust provides, in part, that the trustee shall manage, invest and reinvest the trust property, shall collect the income thereof, and shall pay over the net income to the beneficiaries in accordance with the provisions of the trust, at regular times, in substantially equal amounts. Distributions shall be made in installments and paid to the beneficiaries not less than quarterly.

Article V.b. of the Trust provides that all income shall be distributed equally to Spouse's children. Upon the death of a child, his or her share of said income distribution shall be made to his or her children. If any of Spouse's children should die without being survived by any children who are named as grandchildren herein, then said child's share of said income distribution shall be divided among the other beneficiaries then entitled to income distributions.

Article VI of the Trust provides, in part, that the trust shall terminate, and the corpus and all remaining principal and undistributed income shall be distributed when both the following events have occurred: (a) all of the children have died, and (b) the youngest living grandchild has reached the age of 30 years. Upon the termination, the distribution shall be made of the assets, in kind, or by the sale of some or all of the assets and a distribution of the proceeds. The distribution shall be made per capita among all living grandchildren, or if not living, to their children per stirpes.

Taxpayer relied on a qualified tax professional to advise her in all tax matters for all pertinent years, including the preparation of her gift tax returns. Taxpayer timely reported the Year 1 transfers to the Trust on a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return. On Taxpayer's Year 1 gift tax return, Spouse consented to have the gifts made by Taxpayer and himself to third parties during the calendar year as made one-half by each of them. On Schedule C, Part 2 of the return, the tax professional allocated only \$B of Taxpayer's GST exemption to the Trust, an amount believed to equal one-half the actuarial value of the interests passing to her grandchildren. The tax professional mistakenly believed that Taxpayer was only required to allocate her GST exemption in an amount equal to the actuarial value of the interests passing to her grandchildren in order to achieve an inclusion ratio of zero for the trust.

Spouse died on Date 2. Shortly after Date 2, your representative, on your behalf, submitted a request for a private letter ruling requesting the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make an allocation of Taxpayer's GST exemption for the Date 1

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transfer to the Trust; and (2) that such allocation shall be made based on the value of the property transferred to the Trust as of Date 1, the date of the original transfer.

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 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, 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.

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 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

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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), 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. Accordingly, 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 Date 1 transfer to the Trust. The allocation will be effective as of Date 1, the date of the transfer to the Trust,

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and the gift tax value of the transfer to the trust will be used in determining the amount of GST exemption to be allocated to the Trust.

This allocation should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return 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.

The ruling contained in this letter is 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 specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. 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.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter