

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09 – PLR-119590-04

Date:

July 27, 2004

Re:

**LEGEND**

Taxpayer =

Date 1 =

Trust =

\$a =

Year 1 =

Dear :

This is in response to your letter dated March 31, 2004, on behalf of Taxpayer, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Taxpayer's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer established Trust, an irrevocable trust, for the benefit of her husband and her issue. On the same day, Taxpayer funded Trust with assets valued at \$a. Taxpayer represents that there have been no additions to, distributions from, or taxable terminations with respect to Trust assets since the initial funding of Trust on Date 1.

Article I, paragraph A.1 of Trust provides, in part, that the trustees are authorized at any time or from time to time to pay or apply such part or all of the net income and principal of the trust to or for the benefit of any one or more of Taxpayer's spouse and Taxpayer's living issue, in such amounts or proportions, and to the exclusion of any one

or more of them, as the trustees determine in their absolute discretion for any reason whatsoever, even though any such distribution results in the termination of the trust.

Article I, paragraph A.2 provides that upon the death of Taxpayer's spouse, the trust shall terminate and the remaining principal, together with any accrued and undistributed income, shall be distributed to or for the use of such one or more appointees (other than Taxpayer's spouse, Taxpayer's spouse's estate, the creditors of Taxpayer's spouse, and the creditors of Taxpayer's spouse's estate), outright or in further trust, and in such amounts or proportions and subject to such terms and conditions, as Taxpayer's spouse appoints by his last will and testament admitted to probate. Any property not effectively appointed shall be divided and set apart in a sufficient number of equal shares to provide one such share in respect of each child of Taxpayer who is then living and one share in respect of each child of Taxpayer who is not then living but who has issue then living. Each share so set apart in respect of a living child of Taxpayer shall be held in a separate trust for the collective benefit of such child and his or her issue, and each share so set apart in respect of a deceased child of Taxpayer shall be held in a separate trust for the collective benefit of the issue of such deceased child.

At the time Taxpayer created Trust, she was advised by the drafting attorney that her Date 1 contribution constituted a gift, but that no gift tax would be due. The drafting attorney did not advise Taxpayer of the necessity of filing a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return so that her GST exemption could be allocated to Trust. Based on her discussions with the drafting attorney, Taxpayer mistakenly believed that it was not necessary for her to file a Form 709 for Year 1. Consequently, no gift tax return was filed for Year 1 and no GST exemption was allocated to Trust.

During the course of Taxpayer's consultation with another lawyer, Taxpayer discovered that she should have filed a Form 709 for Year 1 in order to allocate part of her GST exemption to trust.

Taxpayer now requests the following rulings: (1) that Taxpayer be granted an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make an allocation of her GST exemption with respect to the Date 1 transfer to Trust; and (2) that the allocation is to be made based on the fair market value of the trust assets on Date 1, the date of transfer.

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 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)) 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 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, its value at the time of the close of the estate tax inclusion period, and 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, 2001-2 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 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 her available GST exemption with respect to the Date 1 transfer to Trust. The allocation will be effective as of Date 1, the date of the transfer, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated to Trust.

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 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.

In accordance with 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 taxpayer 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)

Enclosures

Copy of letter

Copy for 6110 purposes