

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 - PRL-129989-03

Date:

July 1, 2003

Legend:

Donor =

Trust =

Date 1 =

x =

CPA =

Date 2 =

y =

Date 3 =

Date 4 =

Dear :

This is in response to your authorized representative's letter dated April 25, 2003, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Donor's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Donor established Trust, an irrevocable trust, for the benefit of her daughter and grandchildren. On Date 1, Donor transferred to Trust assets with a reported value of \$x as of the date of the transfer.

Article II of Trust provides for Trust property to be held for the benefit of Donor's daughter. The trustee is to pay the net income to or for the benefit of daughter no less frequently than quarter annually. The trustee also has the discretion to distribute principal to or for the benefit of daughter for her health, support, and maintenance. Upon the death of Donor's daughter, the trustee is to distribute the balance of the trust assets to the daughter's issue, per stirpes.

Article XII provides that Trust will not terminate later than twenty-one (21) years after the death of Donor and all her descendants living on the date of Trust's creation,

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and the trustee is to distribute the trust property at that time in equal shares among the then eligible income beneficiaries.

CPA timely filed Donor's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return reporting Donor's Date 1 transfer to Trust. However, in preparing the Form 709, CPA inadvertently failed to allocate Donor's GST exemption to the transfer. Upon discovering the failure, CPA filed an amended Form 709 on Date 2, allocating \$y of Donor's GST exemption to Trust. The amount of GST exemption allocated was based upon the value of the gift as of Date 2.

Donor died on Date 3 and Donor's estate is in the process of preparing the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, which is due on Date 4.

Donor's estate is requesting an extension of time pursuant to § 301.9100-3 to make an allocation of Donor's GST exemption to Trust and that the allocation be based upon the value of the gift as of Date 1, the date of the original transfer to Trust.

Section 2601 of the Internal Revenue Code 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 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 2642(a) provides the method for determining the inclusion ratio.

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) 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, United States Gift (and Generation-Skipping Transfer) Tax Return.

As applicable to transfers made during the year under consideration, § 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is

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deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] -

(A) the value of such property for purposes of determining the inclusion ration shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

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). 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, 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, the time for making the allocation 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) 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

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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, we grant an extension of time of 60 days from the date of this letter for Donor's estate to make an allocation of Donor's available GST exemption in respect to the transfer to Trust on Date 1. The allocation will be effective as of Date 1, the date of the transfer to Trust, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated to Trust.

This allocation should be made on supplemental a Form 709 and filed with the 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 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 the trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized 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 and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter