

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-132456-03

Date:

September 22, 2003

In Re:

LEGEND:

Husband =

Wife =

Daughter Trust =

Son Trust =

Daughter =

Son =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

\$a =

\$b =

\$c =

\$d =

CPA =

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Corporate Trustee =

Law Firm 1 =

Law Firm 2

Dear :

This is in response to your letter dated April 18, 2003, sent on behalf of Husband and the estate of Wife, requesting an extension of time, under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code, to make allocations of generation-skipping transfer (GST) exemption to lifetime transfers made to two irrevocable trusts.

The facts and representations submitted are summarized as follows: On Date 1 of Year 1, Husband and Wife as grantors established Daughter Trust and Son Trust. Daughter Trust was an irrevocable trust intended to benefit Daughter and her children and Son Trust was an irrevocable trust intended to benefit Son and his children. Other than the beneficiaries, the provisions of each trust are identical.

Section A, article II of the trusts provides that after the death of the initial beneficiary, the trust shall be held for the beneficiary's descendants.

Section A, article III, paragraph A-1 of the trusts provides that during the initial beneficiary's lifetime, if the initial beneficiary or any of his or her descendants is in need of money for reasonable support, the corporate trustee shall pay to the initial beneficiary or the descendant such part of the trust as may be necessary to meet the need.

Section A, article III, paragraph A-2 of the trusts provides that the initial beneficiary shall have a testamentary power to appoint three quarters of the principal and any undistributed income of the trust estate remaining at his or her death to or for the benefit of any one or more persons, excluding the initial beneficiary's estate, creditors, or creditors of the initial beneficiary's estate.

Section A, article III, paragraph A-3 of the trusts provides that after the death of the initial beneficiary, the trustee shall first distribute such portion of the trust estate in such manner as the initial beneficiary has effectively appointed. The trustee shall divide the portion of the remaining balance of the trust estate into shares for the initial beneficiary's then living descendants, according to the principle of representation. If no such descendant is then living, the trustee shall divide such property into shares for the grantors' then living descendants.

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Husband and Wife transferred the following amounts to Daughter Trust in years 1 through 4.

Year 1	=	\$ <u>a</u>
Year 3	=	\$ <u>b</u>
Year 4	=	\$ <u>c</u>

Husband and Wife transferred the following amounts to Son Trust in years 1 through 3.

Year 1	=	\$ <u>a</u>
Year 2	=	\$ <u>d</u>
Year 3	=	\$ <u>b</u>

Timely Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) were not filed for the Year 1 transfers. Law Firm 1 drafted the trust instruments. Husband and the estate of Wife represent that Law Firm 1 advised Husband and Wife that any transfers to the trusts would be exempt from GST tax, but did not inform Husband and Wife that they were required to allocate their GST exemption to the transfers in order to make the trusts GST exempt. Husband and the estate of Wife represent that CPA was their tax preparer and that CPA had knowledge of the initial transfers. Husband and the estate of Wife represent that they relied on CPA to prepare any necessary individual tax returns for 1995.

For the transfers to the trusts in Year 2 through Year 4, the amounts that were transferred to the trusts were subject to the beneficiaries' rights of withdrawal, in amounts that qualified for the annual exclusion under § 2503(b). Husband and Wife did not file Forms 709 for those years.

In Year 3, CPA discovered that no gift tax returns had been filed reporting the transfers in Year 1. CPA prepared a Year 1 Form 709 for Husband and for Wife that reported the transfers in Year 1 to Daughter Trust and Son Trust. On the Forms 709, Husband and Wife consented to treat the gifts made in Year 1 as being made one-half by each pursuant to § 2513 of the Internal Revenue Code. CPA failed to allocate any of Husband's or Wife's respective GST exemption to such transfers.

In Year 5, Husband and Wife retained new legal counsel ("Law Firm 2"). Law Firm 2 discovered numerous errors concerning the reporting or non-reporting of the previous transfers.

Husband and the estate of Wife have requested an extension of time under § 2642(g) and § 301.9100-3, to allocate Husband and Wife's available GST exemption equivalent to the transfers to the trusts made in Year 1 through Year 4, based on the value of the transferred assets as of the date of the original transfers.

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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)) 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 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 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfer 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 § 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 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.

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Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in § 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 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, Husband and the estate of Wife are granted an extension of time of sixty (60) days from the date of this letter to make retroactive allocations of Husband's and Wife's available GST exemption with respect to the transfers to Daughter Trust and Son Trust in Years 1 through 4. The allocation will be effective as of the dates of the transfers to the trust in Years 1 through 4, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to the transfers to the trusts. With respect to the Year 1 transfers, the allocations should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. With respect to the transfers in Years 2 through 4, the allocations should be made on Forms 709 filed at the same address. A copy of this letter should be attached to each Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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.

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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.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayers.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter