

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 / PLR-121496-02

Date:

July 29, 2002

Legend

Taxpayer	=
Trust	=
Date 1	=
Residence	=
a	=
Year 1	=
Child 1	=
Date 2	=
Grandchild 1	=
Grandchild 2	=
Date 3	=
Date 4	=
Child 2	=
Child 3	=
Date 5	=
Year 2	=

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Dear :

This is in response to your letter dated February 27, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) Tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: Taxpayer created Trust, a grantor retained income trust, on Date 1 and transferred Residence and \$a to Trust.

Section 2.02 of the Trust instrument provided that Trust would end in ten years or on Taxpayer's death, whichever occurred first. During the term of the trust, the Trust paid the net income to the Taxpayer at least quarter-annually and the Taxpayer had the right to occupy Residence.

Section 2.03 of the Trust instrument provided that if the trust shall terminate upon the expiration of ten years after the date of the trust agreement, the trustees shall distribute all property then belonging to the principal of the trust to the Taxpayer's issue, then living, in equal shares, per stirpes.

Taxpayer timely filed a Form 709, United States Gift (& Generation-Skipping Transfer) Tax Return ("gift tax return") for Year 1 reporting the transfers to Trust. None of Taxpayer's GST exemption was allocated on the Year 1 gift tax return. The attorneys who prepared the Trust document recorded a deed transferring ownership of Residence to Trust and notified Taxpayer's accountant that a gift tax return would need to be prepared for Year 1. The attorneys informed Taxpayer to transfer the property again at the end of the term but did not advise Taxpayer that GST allocation would need to be allocated at the end of the term, Date 3.

On Date 1, the time of the transfers, all three of Taxpayer's children were living. Child 1, however, died on Date 2, prior to the termination of Taxpayer's retained interest. Child 1 was survived by two children, Grandchild 1 and Grandchild 2.

On Date 4, after the termination of Taxpayer's retained interest, \$a was transferred from Trust to the remainder beneficiaries per the terms of the trust: one-third to Child 2, one-third to Child 3, one-sixth to Grandchild 1, and one-sixth to Grandchild 2 (collectively "the remainder beneficiaries"). Residence continued to be held in trust pending resolution of insurance issues unrelated to Residence but pertaining to the policy which covered Residence and other properties.

On Date 5, after resolution of the insurance issues Residence was transferred by deed to the remainder beneficiaries per the terms of the trust. The attorney who prepared the deed transferring Residence advised Taxpayer that she should have filed

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a gift tax return for the year in which Taxpayer's retained interest terminated and Taxpayer's generation-skipping transfer tax exemption should have been allocated on that return.

Taxpayer represents that prior to her conversation with the attorney who prepared the deed transferring Residence, she believed that she had fully complied with the requirements necessary to remove the assets from her estate and to make the assets exempt from estate and generation-skipping transfer taxes. Taxpayer further represents that no other allocations of Taxpayer's GST exemption have been made.

Taxpayer has requested the following rulings: (1) an extension of time to make a late allocation of Taxpayer's GST exemption as of Date 3, (2) the allocation will be effective as of Date 3, (3) the Date 3 value of the transfers will be used in determining the amount of GST exemption to be allocated to Trust, (4) Trust will have an inclusion ratio of zero, and therefore (5) no GST tax is due as a result of the taxable termination that occurred on Date 3.

Section 2601 of the Internal Revenue Code 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 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 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 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, on and after the close of such 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(f)(1) provides, generally, that except as provided in regulations, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer

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of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under § 2642(f)(2)).

Section 2642(f)(2) provides that in the case of any property to which § 2642(f)(1) applies, the value of such property shall be its value for purposes of chapter 11 if such property is includible in the gross estate of the transferor (other than by reason of § 2035), or its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

Section 2642(f)(3) provides that for purposes of § 2642(f), the term “estate tax inclusion period” means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of the date on which there is a generation-skipping transfer with respect to such property, or the date of the death of the transferor.

Section 26.2632-1(c)(1) provides, in part, that where an allocation has not been made prior to the termination of the estate tax inclusion period, an allocation is effective at the termination of the estate tax inclusion period during the transferor’s lifetime if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the estate tax inclusion period terminates (timely ETIP return).

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 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

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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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 file a supplemental Form 709 and a Notice of Allocation for Year 2 on which Taxpayer will allocate Taxpayer's GST exemption to Trust. The allocation will be effective as of Date 3, the date Taxpayer's estate tax inclusion period ended. The Date 3 value of the transfers to Trust will be used in determining the amount of GST exemption to be allocated to Trust. As none of Taxpayer's GST exemption had been allocated prior to Date 3, Trust will have an inclusion ratio of zero, and therefore, no GST tax is due as a result of the taxable termination that occurred on Date 3. A copy of this letter should be attached to the supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is enclosed for this purpose.

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Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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,
William P. O'Shea
Acting Associate Chief Counsel
Office of Associate Chief Counsel
(Passthroughs and Special Industries)