

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-147825-03

Date:

October 6, 2003

LEGEND:

Taxpayer =

Spouse =

Attorney =

Date 1 =

Trust =

State =

Date 2 =

z =

Accountant =

Year 1 =

Date 3 =

Dear :

This is in response to a letter from your authorized representative, dated July 9, 2003, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Taxpayer's Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Taxpayer and Spouse discussed with Attorney the benefits of creating a trust that would provide for succeeding generations and allocating a portion of Taxpayer's GST exemption to the property transferred to such a trust. Attorney also discussed with Taxpayer and Spouse the option of funding such a trust with gifts of property that would qualify for the

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gift tax annual exclusion under § 2503(b). Taxpayer requested that Attorney prepare a trust agreement in accordance with their discussion. On Date 1, Taxpayer established the Trust, an irrevocable trust for the benefit of Spouse and for the benefit of Taxpayer's issue.

Article Fourth, paragraph (B) of the Trust provides that the trustees may pay so much or all of the net income and so much or all of the principal, at any time or from time to time, as the independent trustees, in their sole discretion, shall determine, to or for the benefit of any one or more members of a class consisting of Spouse and Taxpayer's issue (whether or not in being on the date of the execution of this trust agreement).

Article Fourth, paragraph (D) provides that Spouse shall have the right, by her will duly admitted to probate, to direct the trustees to distribute so much or all of the principal of this trust, together with all accrued and undistributed income, to and among Taxpayer's issue and such charitable organizations, in such amounts or proportions, and upon such terms and conditions, as Spouse shall deem appropriate.

Article Fourth, paragraph (E) provides that the trust shall terminate upon Spouse's death and the remaining principal, together with all accrued and undistributed income, to the extent Spouse did not exercise her special power of appointment, shall be disposed of as follows. If there are one or more issue of Taxpayer living at Spouse's death, such property shall be paid to Taxpayer's then living issue, per stirpes, provided that all property payable to a child of Taxpayer shall not be paid to him or her outright, but rather shall be held by the trustees in a separate trust for his or her benefit and the benefit of his or her issue pursuant to Article Fifth. All property payable to a grandchild or more remote descendant of Taxpayer who is then younger than thirty-five years of age, shall not be paid to him or her outright, but rather shall be held by the trustees in a separate trust for his or her benefit pursuant to the terms of Article Sixth. If there are no issue of Taxpayer living at Spouse's death, such property shall be paid to the person or persons, and in such proportions, as would have been entitled to Taxpayer's estate under the laws of intestate succession of State in effect on the date of Spouse's death, had Taxpayer died on such date.

Article Fifth provides the terms of the separate trusts for the respective benefit of those of Taxpayer's children, each of whom is hereinafter referred to as the "Beneficiary" of his or her separate trust, and such child's issue. Article Fifth, paragraph (A) provides that the separate trust held for the Beneficiary and his or her issue shall terminate upon the Beneficiary's death.

Article Fifth, paragraph (B) provides that the trustees may pay or apply so much or all of the net income and so much or all of the principal, at any time or from time to time as the independent trustees, in their sole discretion, shall determine to or for the benefit of any one or more members of a class consisting of the Beneficiary and the Beneficiary's issue.

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Article Fifth, paragraph (E) provides that the Beneficiary of such separate trust shall have the right by his or her will duly admitted to probate, to direct the trustees to distribute so much or all of the principal of his or her separate trust to and among Taxpayer's then living issue and such charitable organizations, in such amounts or proportions, and upon such terms and conditions as the Beneficiary of such separate trust shall deem appropriate.

Article Eleventh, paragraph (B)(1) provides that with respect to the initial transfer of property to the trustees, and with respect to all other inter vivos additions from all sources made at any time to the trust, Spouse, and each of Taxpayer's then living descendants shall have a power of withdrawal with respect to their share of such addition.

In Date 2, Taxpayer transferred \$z cash to the Trust. Accountant was responsible for the preparation and filing of Taxpayer's Year 1 Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return, however, Accountant mistakenly believed that because the transfer to the Trust qualified for the gift tax annual exclusion, the transfer was also exempt from GST tax. No Year 1 Form 709 was filed and no allocation of Taxpayer's GST exemption was made. There have been no subsequent transfers of property to the Trust. In Date 3, Attorney and Accountant discovered that Taxpayer's GST exemption had not been allocated to the Trust for the transfer made in Year 1.

Taxpayer has requested a ruling granting him an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make an allocation of his GST exemption with respect to the transfer to the Trust in Year 1.

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 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.

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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, 2001-34 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.

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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 Taxpayer's available GST exemption, with respect to the transfer to the Trust. The allocation will be effective as of Date 2, the date of the transfer to the Trust, 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 Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return 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 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 accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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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
Copies of this letter (2)