

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:PSI:9-PLR-163748-02**

Date:

**March 3, 2003**

In Re: Ruling Request of

**LEGEND:**

Taxpayer =

Law Firm =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

a =

b =

c =

d =

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Dear :

This is in response to your letter dated November 8, 2002, sent on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make timely allocations of generation-skipping transfer (GST) exemption with respect to transfers made by Taxpayer to four irrevocable trusts in four different tax years.

The facts and representations submitted are summarized as follows: Taxpayer's spouse died in Year 1. In Year 2, with the assistance of Law Firm, Taxpayer created four irrevocable trusts. Taxpayer has four children and each child and his or her issue are beneficiaries of one of the trusts. Aside from the different trust beneficiaries, the provisions of each trust are identical.

Paragraph A of Article II of each trust provides that current and accumulated net income and principal may be distributed to or applied for the benefit of any one or more of Taxpayer's child and his or her issue in such amounts and at such times as the trustees determine reasonably necessary to provide for a beneficiary's health, education, maintenance, and support.

Paragraph B of Article II of each trust provides that upon the death of Taxpayer's respective child, the trust's then remaining net assets shall be distributed to or held for the benefit of such one or more of the child's issue as the child may have appointed by specific reference to the power in his or her will. It further provides that assets not so appointed shall be administered as a separate trust for the benefit of the issue of Taxpayer's respective child, or, if the child has no issue, for the benefit of the Taxpayer's descendants.

Taxpayer initially transferred \$a to each of the trusts in Year 2. In Year 3, Taxpayer transferred \$b to each of the trusts. In Year 4, Taxpayer transferred \$c to each of the trusts. In Year 5, Taxpayer transferred \$d to each of the trusts. No distributions from any of the trusts have been made to a skip person.

Law Firm has represented Taxpayer with respect to estate and gift tax matters since Year 1. Law Firm advised Taxpayer of the need to allocate GST exemption to the transfers. However, when Law Firm prepared Taxpayer's United States Gift (and Generation-Skipping Transfer) Tax Returns (Form 709) for the transfers to the four trusts in Years 2 through 4, it inadvertently failed to allocate Taxpayer's GST exemption to the transfers. In addition, Law Firm failed to advise Taxpayer of the necessity to file a Form 709 for transfers made in Year 5. Law Firm discovered the errors and omission in Year 6, when it was assisting Taxpayer with additional transfers to the trusts. Taxpayer relied on Law Firm to make the allocations on properly prepared gift tax returns.

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Taxpayer requests an extension of time under § 301.9100-3 to allocate Taxpayer's GST exemption to the transfers to each of the four trusts made in Years 2 through 5.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a)(1) provides, generally, that the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust where the property passes to a skip person with respect to the transferor of the property. Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person other than a taxable termination or a direct skip. Section 2612(c)(1) provides that a "direct skip" is a transfer subject to federal estate or gift tax made by a transferor to a skip person.

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

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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.

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, Taxpayer is granted an extension of time of sixty (60) days from the date of this letter to make retroactive allocations of Taxpayer's available GST exemption with respect to Taxpayer's transfers to the trusts in Years 2 through 5. The allocation will be effective as of the dates of the transfers to the trusts in Years 2 through 5, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to the trusts. The allocations should be made on supplemental Forms 709 filed with the Internal Revenue

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Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 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 trusts.

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.

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

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: