

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 - PLR-131852-02

Date:

July 12, 2002

Re:

Legend

Date 1 =

Husband =

Trust =

Date 2 =

X =

Y =

Wife =

CPA =

Date 3 =

Dear :

This is in response to your letter dated May 20, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Husband created Trust, an irrevocable trust, for the benefit of his children and their descendants.

Section 1(a)(i) of Trust directs the trustees, upon initial funding, to divide the trust estate into equal shares for each of grantor's children to be held, administered and distributed as separate trusts.

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Section 1(a)(ii) of Trust provides that any additional property subsequently transferred to the trustee will be divided into equal shares for each of grantor's children, with the share of any child of grantor who is deceased to be divided among that child's descendant's then living, per stirpes, and if none, then divided into equal shares as to provide one share for each then living grandchild of grantor, per capita.

Sections 1(c) and (e) of Trust provide that each child, grandchild, or descendant of grandchild's respective trust estate will continue until the earlier of his or her death, or the expiration of the termination period. The trustees shall use and apply, directly or indirectly, for the benefit of, and/or pay to, any beneficiary for whom such trust estate was established and his or her descendants living from time to time, so much, none or all of the annual net income and principal of the trust estate as the trustees, in their discretion, deem necessary for the education, maintenance, health and support in reasonable comfort and for such other purposes as they may deem to be in the best interest of the beneficiaries.

Section 1(d) of Trust provides that upon the death of child or grandchild, the property constituting his or her trust estate shall be distributed in such portions and to such of grantor's descendants as such child or grandchild may appoint by his or her last will. If such child or grandchild fails to exercise such power of appointment, the unappointed trust property shall be distributed as follows: (1) in the case of a child's trust, to his or her then living descendants, per stirpes, if any, otherwise in equal shares to grantor's then living grandchildren, per capita, subject to the provisions of Sections 1(c), 1(d) and 1(e); or (2) in the case of a grandchild's trust, to such grandchild's then living descendants, per stirpes, subject to the provisions of Section 1(e).

In Date 2, Husband made gifts of X, which he valued at Y, to Trust. Wife consented to split the gifts, which were reported on timely filed gift tax returns. CPA prepared the Forms 709, however, CPA failed to allocated any of Husband's and Wife's GST exemption to the Date 2 transfer of X. In a letter dated Date 3, Husband and Wife's attorney informed them that after a review of their prior Forms 709, they discovered that GST exemption allocations had not been made for the Date 2 gifts to Trust.

Husband and Wife have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make allocations of their respective GST exemption; and (2) that such allocations are to be made based on the value of the transferred assets on the date transferred to Trust.

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.

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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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) 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.

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 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 any trust as a generation-skipping trust are to be treated as if not expressly prescribed

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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), 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 GST trust are to be treated as if not expressly prescribed by statute. Accordingly, 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. See Notice 2001-50, 2001-34 I.R.B. 189.

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 Wife are granted an extension of time of 60 days from the date of this letter to make allocations of their available GST exemption, with respect to the Date 2 transfers of X to Trust. The allocations will be effective as of the date of the transfer to Trust, and the gift tax value of the transfer to Trust will be used in determining the amount of GST exemption to be allocated to Trust.

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

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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.

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. The allocation should be made on a supplemental 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 supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

William P. O'Shea

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter