

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-156469-02

Date:

November 26, 2002

Re:

LEGEND:

Taxpayer =

Date 1 =

Spouse =

Trust =

a =

Date 2 =

b =

Year 1 =

Accounting Firm =

Year 2 =

c =

Date 3 =

d =

Year 3 =

e =

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Dear \_\_\_\_\_ :

This is in response to your letter dated October 4, 2002, on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer's spouse, Spouse, established Trust, an irrevocable trust, for the benefit of her children and their descendants.

Article II, paragraph B of Trust provides that until the "Division Date" later specified, the trustee may pay to or for the benefit of any of Spouse's descendants living from time to time as much of the net income or principal as the trustee may deem appropriate for any purpose; provided, the trustee shall not exercise this discretionary power to distribute income or principal so as to discharge Spouse's or Taxpayer's legal obligations.

Article II, paragraph C of Trust provides that the "Division Date" shall be the date that Spouse's oldest living child reaches age twenty-five or such earlier date that no child of Spouse's is living, but in no event shall the "Division Date" be later than the "Termination Date" described in Article III, paragraph C, clause (1) of Trust.

Article II, paragraph D of Trust provides that at the "Division Date" the trustee shall divide the principal and any undistributed income of the trust into equal shares, one share for each child of Spouse's who is then living and one share for each deceased child of Spouse's who has effectively exercised the power of appointment granted to the child or who leaves a descendant then living. The trustee shall retain each share in a separate trust to be administered or distributed as directed in Article III for the benefit of the child (and descendants of the child) for whom the share has been set aside.

Article III, paragraph A of Trust provides that subject to the provisions of Article III, paragraph B and until the "Termination Date," the trustees may pay to or for the benefit of the child or any of the child's descendants as much of the net income or principal of the trust as the trustee may deem appropriate for any purpose. The trustee shall annually add any undistributed income to principal.

Article III, paragraph B of Trust provides that at the child's death (or at the "Division Date" if the child is not then living), the trustees shall distribute the principal and undistributed income of the trust as the child may appoint by specific reference to this limited power of appointment in the child's will. The child may appoint to or among any one or more of Spouse's descendants other than the child exercising the power, and the child may appoint outright, to a custodian or to a trustee to be held in further

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trust. Following the child's death (or the "Division Date," as the case may be), the unappointed trust assets shall continue to be administered as directed in Article III, paragraph A.

Article III, paragraph C of Trust provides that the "Termination Date" shall be the earlier of (1) the date that is twenty years after the death of the last survivor of Spouse's descendants who are living on the date of this agreement, or (2) the first date on or after the child's death that there is no living descendant of the child.

Article III, paragraph D of Trust provides that at the "Termination Date" the trustees shall distribute the trust assets to the child's then living descendants, per stirpes, or if there are none, the trustees shall divide the trust assets into equal shares, one share for each child of Spouse's who is then living and one share for each deceased child of Spouse's having a then living descendant or having effectively exercised such child's limited power of appointment under Article III, paragraph B. The trustees shall add the share of each then living child for whom a separate trust is then held under this Article to such child's separate trust, and the share shall be subject to the child's limited power of appointment under Article III, paragraph B. The trustees shall add the share of each deceased child for whom a separate trust is then held under this Article to such child's separate trust, or the share shall be subject to the child's limited power of appointment under Article III, paragraph B, to the extent the child shall have specifically referred to this sentence in the exercise of such power. The trustees shall distribute the share of each deceased child for whom no separate trust is then held under this Article and who has not exercised such power of appointment to such child's then living descendants, per stirpes.

On Date 1, Spouse transferred \$a to Trust. On Date 2, Spouse transferred \$b to Trust. Taxpayer and Spouse each reported the transfers to Trust, along with their other gifts, on timely filed Year 2 Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and elected to split gifts made by them to third parties during the calendar year under § 2513 of the Internal Revenue Code. Taxpayer's and Spouse's Year 2 gift tax returns were prepared by Accounting Firm, an accounting firm that has been advising Taxpayer and Spouse on tax matters and preparing their gift tax returns since Year 1. A notice of allocation was attached to each Year 2 gift tax return and \$c (an amount equal to one-half of the total value of property transferred to Trust in Year 2) of each taxpayer's respective GST exemptions was allocated to Trust.

On Date 3, Spouse transferred \$d to Trust. Taxpayer and Spouse each reported the transfer to Trust, along with their other gifts, on timely filed Year 3 Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and elected to split gifts made by them to third parties during the calendar year under § 2513. Taxpayer's and Spouse's Year 3 gift tax returns were also prepared by Accounting Firm. A notice of allocation was attached to Spouse's Year 3 gift tax return and \$e (an amount equal to one-half the total value of property transferred to Trust in Year 3) of Spouse's GST

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exemption was allocated to Trust. Accounting Firm, however, mistakenly failed to make a corresponding allocation of \$e of Taxpayer's GST exemption to Trust on Taxpayer's Year 3 gift tax return.

In a recent review of Taxpayer's and Spouse's estate plan, Taxpayer's estate planning attorney discovered that Accounting Firm failed to allocate Taxpayer's available GST exemption to the transfer to Trust in Year 3.

Taxpayer has requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make an allocation of Taxpayer's GST exemption for the transfer to Trust in Year 3; and (2) that such allocation shall be made based on the value of the property transferred to Trust as of Date 3, the date of the original transfer.

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 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) 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

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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.

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.

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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 Taxpayer's transfer to Trust in Year 3. The allocation will be effective as of Date 3, 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 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.

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 accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

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.

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter