

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4 - PLR-137301-02  
Date:

DECEMBER 17, 2002

Re:

LEGEND:

- Taxpayer -
- Trust -
- Trustee -
- Company -
- Date 1 -
- Date 2 -
- Year 1 -
- Year 3 -
- A -
- B -
- C -
- m dollars -
- n dollars -
- o dollars -
- Cash Gift -
- x shares -
- y shares -
- Accounting Firm -
- Lawyer -

Dear :

This is in response to your letter dated June 19, 2002, and other correspondence, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption.

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The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer established Trust, an irrevocable trust, for the benefit of her children and their lineal descendants. The trustee of Trust is Trustee.

Article Two of Trust provides that the Trustee shall divide the property initially transferred to Trust between the exempt share and the nonexempt share, for generation-skipping tax purposes, in accordance with the provisions of Article Three. If an additional gift is made to Trust after the initial transfer to Trust, the Trustee shall also divide the property between the exempt share and the nonexempt share, in accordance with the provisions of Article Three.

Article Two, Paragraph 2.1.a provides that the Trustee shall divide the trust estate of the exempt share into as many equal shares as there are children of the trustor then living and children then deceased who have left issue then living. The Trustee shall allocate one equal share to each then living child, which share shall be held in a separate trust for the benefit of such child and administered as provided in paragraph 2.1.b. The Trustee shall allocate one equal share to the then living issue of each deceased child, which share shall be further divided into subshares among such issue, by right of representation. Each subshare shall be allocated to a descendant of the trustor and shall be held in a separate trust for the benefit of such descendant and administered as provided in paragraphs 2.1.b.

Article Two, Paragraph 2.1.b(1) provides that the Trustee shall pay to or apply for the benefit of the beneficiary from time to time as much of the net income of the trust estate as the Trustee in the Trustee's discretion deems necessary for the beneficiary's health, support, maintenance and education, after taking into consideration any other resources available to the beneficiary outside of the trust and known to the Trustee. Any income not distributed shall be accumulated and added to principal.

Article Two, Paragraph 2.1.b(2) provides that the Trustee may also pay to or apply for the benefit of the beneficiary from time to time as much of the principal of the trust estate as the Trustee in the Trustee's discretion deems necessary for the beneficiary's health, support, maintenance and education, after taking into consideration any other resources available to the beneficiary outside of the trust and known to the Trustee.

Article Two, Paragraphs 2.1.b(3) provides that Trust shall terminate upon the twentieth anniversary of the date of execution of this instrument. Notwithstanding the preceding sentence, the Trustee, in the Trustee's discretion, may terminate such trust at any earlier time when such trust is not a grantor trust described in Subpart E of Part I of Subchapter J of Subtitle A of the Internal Revenue Code. Upon termination, the Trustee shall distribute the trust estate as follows: If the beneficiary of Trust is A or a descendant of A, then the trust estate of such trust shall be distributed to the A Exempt

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Trust dated on the date of Trust. The Trust provides identical terms for B and C, and their respective B Exempt Trust and C Exempt Trust.

Article Three provides that property allocated to the exempt share shall consist of an amount equal to: (i) the GST Exemption (as defined in section 2631(a)) of the individual whose GST Exemption is being allocated, (ii) reduced by: the amount of such individual's GST Exemption previously allocated by such individual or such individual's personal representative to gifts (made directly or by gift-splitting) during the life of such individual (including allocations attributable to prior transfers to Trust). Any remaining balance of property transferred to Trust shall be allocated to the nonexempt share.

Article Six, Paragraph 6.11 provides that it is the intention of the trustor that Trust be interpreted in a manner consistent with the maximum use of any unused generation-skipping transfer exemption of the trustor which may be available under section 2631(a) with respect to any transfer to or distribution from Trust, and the provisions of Trust shall be interpreted accordingly.

On Date 2, Taxpayer transferred the following to Trust: x shares of Series A common stock of Company valued for gift tax purposes at m dollars; y shares of common stock of Company valued for gift tax purposes at n dollars; and Cash Gift. The total value of the listed transfers as of the date of transfer is o dollars.

Taxpayer had a long-standing relationship with Accounting Firm. Taxpayer retained Accounting Firm's services to prepare all of her tax returns for Year 1, including her personal income tax return and gift tax return. Accounting Firm, however, failed to file Taxpayer's gift tax return reporting the Year 1 transfers and allocating a portion of Taxpayer's GST exemption to the transfers.

Lawyer drafted Trust in Year 1. In Year 3, Lawyer requested a copy of Taxpayer's Year 1 gift tax return from Accounting Firm and learned that it was never prepared or filed.

You have requested the following rulings: (1) that the Service grant an extension of time under section 2642(g) of the Internal Revenue Code and sections 301.9100-1 and 301.9100-3 to allocate Taxpayer's GST exemption under section 2642(b)(1) to the transfers to Trust in Year 1; and (2) that such allocations are to be made based upon the value of the transferred assets to Trust as of Date 2, the date of the original transfer.

Section 2501(a) imposes a tax on the transfer of property by gift during each calendar year by any individual.

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Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under section 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.

Under section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction.” The applicable fraction, as defined in section 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the 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 section 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 2631(b) provides that any allocation under section 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under section 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 (United States Gift (and Generation-Skipping Transfer) Tax Return).

Section 2642(b)(1) provides that, except as provided in section 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 section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1) the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 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. 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.

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Section 2642(g)(1)(A) provides 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 section 2642(b)(1) or (2), and an election under section 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, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 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 section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. Notice 2001-50, 2001-34 I.R.B.189, provides that taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 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 section 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 transfers on Date 2 to Trust. The allocation will be effective as of Date 2, the date of the transfers to Trust, and the value of the transfers to Trust for purposes of determining the amount of GST exemption to be allocated to Trust, shall be its value as finally determined for purposes of chapter 12.

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 any aspect of any transaction or item discussed or referenced in this letter under the cited provisions or under any other provisions of the Code.

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. This election 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, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter