

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-142024-02
Date:
January 21, 2003

In Re:

Legend

Taxpayer =

Date 1 =

Trust =

A =

B =

C =

Shares =

\$x =

GST Trust =

Irrevocable Trust =

Date 2 =

Law Firm =

Year 1 =

Date 3 =

Year 2 =

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Dear _____ :

This is in response to your letter dated July 19, 2002, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 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: On Date 1, Taxpayer executed three Trust agreements, one for the benefit of each of Taxpayer's children A, B, and C. The terms of each Trust are identical except for the named beneficiary. Taxpayer transferred Shares to each Trust.

Article III, paragraph B of each Trust provided Taxpayer with an annuity payable on the last day of each taxable year of each Trust and upon each Trust's termination date. Pursuant to Article III, paragraph A, if any issue of Taxpayer were living on the Trust's termination date, property valued at \$x would pass and be paid to the GST Trust of the child named in the Trust and any remaining property would pass and be paid to the Irrevocable Trust of such child. If no issue of Taxpayer was then living, the trust properties would pass and be paid to Taxpayer's heirs at law.

Contemporaneously with the formation of each Trust, Taxpayer executed a GST Trust agreement and Irrevocable Trust agreement for the benefit of the child named in each Trust.

Article III, paragraph B, of each GST Trust provides that all trust income is to be paid to the child for whom the trust was created in annual or more frequent installments and discretionary distributions of principal may be made for the child's health, support, maintenance, and education.

Article III, paragraph C, of each GST Trust provides the child with a special power of appointment exercisable by will at the child's death in favor of any one or more of a group consisting of Taxpayer's issue. If the child fails to exercise this power of appointment, Article III, paragraph A, provides for the trust properties to pass in trust for the child's then living issue, or if none, to Taxpayer's then living issue, per stirpes, or if none, then outright to Taxpayer's heirs at law. Any trust created for the issue of the child is governed by the provisions of the GST Trust agreement.

Article III, paragraph D of each GST Trust provides that if any trust created under the GST Trust does not sooner terminate, it will terminate twenty-one years after the death of the last issue in being on the date the GST Trust was created.

The dispositive provisions of each Irrevocable Trust are similar to those of the GST Trusts except that Article III, paragraph C of each Irrevocable Trust provides the child with a testamentary general power of appointment.

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On Date 2, each Trust terminated and the properties in each Trust were distributed in accordance with the terms of each Trust. Upon the termination of each Trust, each child's GST Trust received property valued at \$x.

Law Firm prepared Taxpayer's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1, which was filed on or before Date 3. Schedule A of the return reported the transfer of Shares to the Trusts and a notation that the transfers created an opening of an estate tax inclusion period (ETIP). Because it was contemplated that the allocation of Taxpayer's GST exemption to the GST Trusts would be made at the end of the ETIP, no allocation of Taxpayer's GST exemption was made on Schedule C of the return. Upon the closing of the ETIP in Year 2, Taxpayer relied upon Law Firm to file the Form 709 allocating her GST exemption for the transfers of \$x to each child's GST Trust. However, there is no record of a Form 709 being filed for Year 2. As a result, Taxpayer's GST exemption was not allocated to the transfers to the GST Trusts that occurred at the termination of the ETIP.

Taxpayer has requested an extension of time under § 2642(g) and § 301.9100 to make an allocation of Taxpayer's available GST exemption to the GST Trusts and that such allocations are to be made based on the value of the property at the close of the ETIP.

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)) 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 § 2631(a), once made, shall be irrevocable.

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 26.2632-1(b)(2) 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.

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Section 26.2632-1(c)(1) provides, in part, that where an allocation has not been made prior to the termination of the ETIP, an allocation is effective at the termination of the ETIP during the transferor's lifetime if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the ETIP terminates (timely ETIP return).

Section 26.2632-1(c)(3)(ii) provides that an ETIP terminates at the time at which no portion of the property is includible in the transferor's gross estate.

As applicable to the transfers made during the years under consideration, § 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] --

(A) the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

Section 2642(f)(1) provides, generally, that except as provided in regulations, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under § 2642(f)(2)).

Section 2642(f)(2) provides that in the case of any property to which § 2642(f)(1) applies, the value of such property shall be its value for purposes of chapter 11 if such property is includible in the gross estate of the transferor (other than by reason of § 2035), or its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

Section 2642(f)(3) provides that for purposes of § 2642(f), the term "estate tax inclusion period" means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of the date on which there is a generation-skipping transfer with respect to such property, or the date of the death of the transferor.

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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 § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted 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 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 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 the transfers of \$x to each child's GST Trust. The allocation, once made, will be effective as of Date 2, the time of the close of the ETIP and, for purposes of determining the inclusion ratio, the value of the GST Trusts on Date 2 shall be considered the value of the transfers to the GST Trusts. The allocation should be made on Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709. A copy is attached 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