

Internal Revenue Service

Department of the Treasury

Number: **200327007**

Washington, DC 20224

Release Date: 7/3/2003

Index Number: 2642.00-00; 9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-152290-02

Date:

Re:

MARCH 13, 2003

Legend:

- Husband =
- Wife =
- Date 1 =
- Date 2 =
- Year 1 =
- Year 2 =
- Son =
- a =
- Accountant =
- Attorney =

Dear :

This is in response to your letter dated September 17, 2002, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations and section 2642(g) of the Internal Revenue Code to make an allocation of the generation-skipping transfer (GST) tax exemption to a transfer to a trust.

The facts and representations submitted are summarized as follows:

On Date 1, Husband and Wife (the Taxpayers) established a Trust for the benefit of Son. Section 3 of the Trust provides that initially, the term of Trust is for the life of Son.

Section 3, Paragraph a. provides that during the initial term of the Trust, the Trustee is to distribute to Son all of the net income of the trust estate. Upon the death of Son, any accumulated undistributed income shall be distributed by the Trustee to Sons' estate.

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Section 3, Paragraph b. provides that if during the initial term of this Trust, the net income distributed to Son shall not be adequate in the opinion of the Trustee to provide for Son's health, education, maintenance, and support, in accordance with his station in life, the Trustee may supplement the same out of principal.

Section 3, Paragraph c. provides, in part, that with respect to any contribution made by Taxpayers or any other donors to the trust prior to Date 2 of a particular calendar year, Son and any of his then-living descendants may, by written and signed request delivered to the Trustee, withdraw from the trust an amount not exceeding the lesser of (i) the amount then described in section 2503(b) of the Internal Revenue Code and (ii) his proportionate part only of the fair market value of such contribution on the date of the contribution.

Section 4 provides that upon the death of Son, all of the assets of the Trust estate (other than the undistributed income payable to the estate of Son) shall be distributed, per stirpes, to the descendants of Son. If any of Son's descendants are under the age of 26 at the date of Son's death, then Trustee shall divide the trust estate into shares to which each of the beneficiaries are entitled. The Trustee shall distribute those shares to the beneficiaries who have reached the age of 26 and shall retain the shares of those beneficiaries who have not reached that age, pursuant to the terms of section 5.

Section 5 provides, in part, that from the date of division into separate shares as set forth in section 4 until the time of termination set forth in section 6, all separate shares of the trust estate, and portions and parts of shares, shall continue to be held, managed, invested, reinvested and distributed by the trustee. The trustee shall distribute all of the net income of the trust estate to the beneficiary. In addition, the trustee may distribute so much of the principal of the estate, or a portion or a part thereof, to the beneficiary, as the trustee may deem necessary and appropriate to provide for his health, education, maintenance and support in accordance with his station in life, considering all other sources available to such beneficiary.

Section 6 provides, in part, that when each of the beneficiaries of the separate trusts as provided for in section 5 reach the age of 26 years, such trust shall terminate and all of the assets and property comprising the principal of such separate share or undistributed income shall be delivered and distributed to said beneficiary.

Husband and Wife each made a gift of \$a to the Trust in Year 1. Accountant prepared the Taxpayers' gift tax returns (Form 709) for Year 1. On the gift tax returns, Accountant indicated that the gifts were subject only to the gift tax and mistakenly failed to allocate any of Taxpayers' GST tax exemption to the gift. In Year 2, Attorney discovered Accountant's failure to allocate GST tax exemption and informed Husband. No additional transfers have been made to the trust. No generation-skipping transfer have been made from the trust.

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You have requested the following rulings: (1) an extension of time under section 2642(g) and sections 301.9100-1 and 301.9100-3 to make an allocation of Taxpayers' GST exemption; and (2) that such allocation shall be made based on the value of the property transferred to the Trust as of Date 1, the date of the original transfers.

Section 2601 imposes a tax on every generation-skipping transfer (GST) (within the meaning of subchapter B). 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 GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means, with respect to any GST transfer, 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 of which 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)(1) provides that any allocation by an individual of his 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)(i) 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 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)— (A) 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, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed

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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 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, 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 section 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 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.

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. 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

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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 section 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 Year 1 gifts of \$a to Trust. The allocations will be effective as of the date of the transfers to Trust, and the gift tax value of the transfers to Trust will be used in determining the amount of GST exemption to be allocated to Trust.

These allocations 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.

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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter