Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B9-PLR-124734-03
Date:
August 4, 2003

Re:

Legend

Taxpayer	=	
Date 1	=	
x	=	
Trust	=	
Date 2	=	
Foundation	=	
CPA	=	
Year 1	=	
Year 2	=	

Dear :

This is in response to your letter dated April 8, 2003, submitted by your authorized representative, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 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 transferred $x to Trust created under an agreement executed on Date 2.

Article FIRST of Trust divides the trust estate into two portions. The first portion, known as "Portion 1," consists of that fractional part of the transferred property of which the numerator is the amount of Taxpayer's unused GST exemption and the denominator is the greater of the numerator or the value of the property as finally determined for Federal gift tax purposes. Portion 1 will be held in a separate trust in accordance with the terms of Article SECOND. The second portion, known as "Portion 2," is the balance, if any, of the transferred property.

Article SECOND, paragraph A directs the trustee to pay over to or apply the net income and principal of Portion 1 to or for the benefit of the members of the class consisting of Taxpayer, his spouse, and his descendants during the trust term as the trustee, in his absolute discretion, elects. Taxpayer may not be a member of the class of beneficiaries during any period that Taxpayer is lawfully married and is living with his spouse as husband and wife.

Article SECOND, paragraph B provides that the separate trust for Portion 1 will terminate upon the first to occur of (i) the exercise by a designated “selector” of the power to terminate the trust; or (ii) the death of the survivor of Taxpayer and Taxpayer’s surviving spouse. Upon termination, the remaining trust fund is to be divided into the number of equal shares necessary to set aside one share for each child of Taxpayer who is then living, and one share in per stirpital parts for the collective descendants who are then living of any child of Taxpayer who is not then living. Each share created will be held in a separate trust. If no descendant of Taxpayer is then living, the remaining trust fund will be distributed to Foundation.

Article SIXTH, paragraph A provides that no payment of principal or income may be made from any trust to Taxpayer or any other person who has contributed property to Trust.

CPA has prepared all of Taxpayer’s personal tax returns since Year 1. In addition, after the Date 1 transfer to Trust, Taxpayer asked CPA to prepare all appropriate tax returns for Trust. Inadvertently, CPA failed to prepare Taxpayer’s Year 2 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. As a result, Taxpayer’s unused GST exemption was not allocated to the Date 1 transfer to Trust.

Taxpayer has requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Taxpayer's available GST exemption to the Date 1 transfer to Trust and that such allocation be effective as of Date 1, the date of the transfer to Trust.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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 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.

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 transfer to Trust on Date 1. The allocation will be effective as of Date 1, 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 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 addition, we express or imply no opinion regarding the value of the property transferred to the Trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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.

Sincerely,

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

Enclosures
Copy for section 6110 purposes
Copy of this letter