

**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-142953-02  
Date:  
December 2, 2002

Re:

LEGEND

- Taxpayer =
- Date 1 =
- Spouse =
- Trust 1 =
  
- Son =
- Trust 2 =
  
- Daughter =
- \$x =
- Accountant =
- Year 1 =
- Date 2 =
- Date 3 =
- Year 2 =
- Date 4 =

Dear :

This is in response to your letter dated August 5, 2002, 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 late allocations of Taxpayer's generation-skipping transfer ("GST") tax exemption.

## FACTS

The facts and representations are summarized as follows: On Date 1, Taxpayer and Spouse created two irrevocable trusts for the benefit of their children, Trust 1 for the benefit of Son and Trust 2 for the benefit of Daughter. The terms of Trust 1 and Trust 2 are substantially identical.

Article One, Paragraph (a) of Trust 1 and Trust 2 provides that each trust is irrevocable.

Article One, Paragraph (b) provides that Taxpayer, Spouse and others shall have the right at any time and from time to time to transfer additional money or property to each trust.

Article Two, Paragraph (a) provides that the instrument by which property is transferred to each trust may make such property subject to withdrawal rights by an express statement to that effect. In the absence of such an express statement, such property will not be subject to withdrawal rights.

Article Three, Paragraph (a) provides that the trustee shall distribute to the child for whom each trust was created such amount or amounts from income, and if income is not sufficient, from principal, as is necessary for such child's health, maintenance and support in accordance with the manner of living to which he or she is accustomed at the time of such distribution, taking into account all other resources available to such child for such purposes and known to the trustee. In addition, the trustee may accumulate any income not distributed to such child for such purposes, or may, at any time and from time to time, distribute any part or all of such income or any part or all of the remaining principal which is not distributed to such child for such purposes and which the trustee determines to be unnecessary for such child's anticipated future support needs to or among such child's lineal descendants.

Article Three, Paragraph (b) provides the following guidance to the trustee in exercising the trustee's discretion under Article Three, Paragraph (a):

We anticipate that this trust will continue after [the child]'s death and that the assets held in the trust, possibly including property added to this trust upon the deaths of each of us, will be exempt from the generation-skipping transfer tax, and that other assets made available to [the child] during our lives and at our deaths will not be so exempt. Accordingly, to the extent consistent with the provisions of this Article, we desire the trustee to consider such exempt status in determining whether and to what extent to make distributions from this trust to [the child, his or her] descendants and spouses of such descendants.

Article Three, Paragraph (c) provides that each child shall have the full power, exercisable by his or her last will and testament duly proved and allowed, to direct the disposition of all or any part of the property remaining in the trust at his or her death (including a fractional share, a pecuniary amount or specific assets, as he or she shall determine) to or among anyone other than such child, his or her creditors, his or her estate or the creditors of his or her estate, as he or she may choose, and in such manner, in trust or otherwise, as he or she may determine; provided, however, that he or she may exercise this limited power of appointment only by specific reference thereto in his or her will.

Article Three, Paragraph (d) provides that upon each child's death, if any one or more of such child's lineal descendants is then living, any property remaining in the trust that is not disposed of by an effective exercise of such child's limited testamentary power of appointment shall be divided by the trustee into the number of equal shares necessary so that one share shall be set aside for each line of such child's lineal descendants of which one or more members is then living. Each such share shall continue to be held by the trustee in a separate trust.

On Date 1, the same day that Taxpayer and Spouse created Trust 1 and Trust 2, Taxpayer transferred \$x in cash to Trust 1 and \$x in cash to Trust 2.

Taxpayer hired Accountant to prepare a United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) for Year 1. Accountant prepared the return on which he reported Taxpayer's contributions to Trust 1 and Trust 2 as taxable gifts. However, in completing the return, Accountant inadvertently failed to allocate any portion of Taxpayer's GST exemption to the transfers made to Trust 1 and Trust 2. On Date 2, Taxpayer timely filed the Form 709 as prepared by Accountant.

On Date 3, Taxpayer and Spouse each made additional transfers of \$x to Trust 1 and Trust 2. Taxpayer hired Accountant to prepare a Form 709 for Year 2. Accountant again reported Taxpayer's contributions to Trust 1 and Trust 2 as taxable gifts but failed to allocate any portion of Taxpayer's GST exemption to those transfers. On Date 4, Taxpayer timely filed the Form 709 as prepared by Accountant.

Taxpayer represents that he has not previously allocated any of his GST exemption to any other transfers of property.

Based on the foregoing facts and representations, Taxpayer now requests an extension of time to make the following allocations of GST exemption:

1. Allocation of \$x of GST exemption to Taxpayer's Date 1 transfer to Trust 1;

2. Allocation of \$x of GST exemption to Taxpayer's Date 1 transfer to Trust 2;
3. Allocation of \$x of GST exemption to Taxpayer's Date 3 transfer to Trust 1; and
4. Allocation of \$x of GST exemption to Taxpayer's Date 3 transfer to Trust 2.

## LAW & ANALYSIS

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

Section 2611(a) provides that the term "generation-skipping transfer" means: (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 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 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)— (A) 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 (B) 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 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 § 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.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in § 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 Code except subtitles E, G, H, and I.

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 sixty (60) days from the date of this letter to make allocations of his GST exemption as follows: \$x to his Date 1 transfer to Trust 1, \$x to his Date 1 transfer to Trust 2, \$x to his Date 3 transfer to Trust 1 and \$x to his Date 3 transfer to Trust 2. The allocations should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. Copies are 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.

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.

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

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.

Sincerely,

Heather C. Maloy

Heather C. Maloy  
Associate Chief Counsel  
Passthroughs and Special Industries

Enclosures

Copy of letter  
Copy for 6110 purposes