

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-124720-03

Date:

August 4, 2003

In Re:

LEGEND:

Grantor =

Year 1 =

Year 2 =

Trust =

Foundation =

\$a =

Spouse =

Accounting Firm A =

Accountant A =

Accountant B =

Accounting Firm B =

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Dear \_\_\_\_\_ :

This letter responds to your representative's letter, dated March 31, 2003, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make a timely allocation of generation-skipping transfer (GST) exemption with respect to a transfer made by Grantor to an irrevocable trust.

The facts and representations submitted are summarized as follows: In Year 1, Grantor created Trust for the benefit of Grantor's descendants and transferred \$a to Trust.

Article III(A)(1) of Trust provides that during Grantor's lifetime, the trustees shall pay to such one or more of Grantor's living issue from time to time so much of the net income and principal of the trust as the independent trustees, in their discretion, determine.

Article III(A)(2) of Trust provides that upon Grantor's death, the trust shall terminate and the remaining principal shall be paid to Grantor's then living issue, per stirpes, subject to lifetime trusts set forth in Article III(B) of Trust.

Article III(B)(1) of Trust provides that any property payable to a descendant of Grantor's parents will be held in a trust for such descendant (the "beneficiary") from which the trustees shall pay to such one or more of the beneficiary and the beneficiary's living issue from time to time so much of the net income and principal as the independent trustees, in their discretion, determine.

Article III(B)(2) of Trust provides that upon the death of a beneficiary, the trust will terminate and the remaining principal will be paid as that beneficiary appoints: (i) by exercise of a special power of appointment in favor of one or more of Grantor's issue, if any issue of Grantor is then living, and otherwise in favor of any person, except the beneficiary, the beneficiary's estate, or the creditors of the beneficiary or the beneficiary's estate, or in favor of any charitable organization described in section 2055(a) of the Internal Revenue Code; or (ii) by exercise of a general testamentary power of appointment, if any has been conferred upon the beneficiary by the independent trustees of the trust.

Article III(C) of Trust provides that, notwithstanding anything in the trust agreement to the contrary, each trust under Article III shall terminate upon the expiration of the longest period that property may be held in trust under the law of the jurisdiction governing such trust.

Article IV of Trust provides that if upon the termination of any trust the remaining principal is not effectively disposed of, such principal shall be paid to Grantor's parents' issue, determined as though none of Grantor's parents' children were then living, subject to the trust provisions of Article III(B), or if no such issue is then living, to the then living issue of Grantor's parents (other than Grantor), or if none, to Foundation, if it is then a charitable organization described in § 2055(a).

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In Year 1, as well as in the four years previous to Year 1, Grantor and Spouse retained Accounting Firm A to prepare Grantor's and Spouse's income and gift tax returns.

In the period prior to the due date for filing the Year 1 Form 709 (the United States Gift (and Generation-Skipping) Transfer Tax Return), Spouse advised Accountant A at Accounting Firm A of Grantor's transfer to Trust in Year 1 and of Grantor's intention to allocate a portion of her available GST exemption to the amount of the transfer. Sometime thereafter, Grantor and Spouse received a letter from Accountant A advising that Accountant B would be handling the account of Grantor and Spouse for Year 1. The letter states that Accountant A and Accountant B will review the tax file of Grantor and Spouse to ensure the transition is a smooth one.

Accounting Firm A prepared a Year 1 Form 709 that was timely filed by Grantor. The Form 709 did not report the transfer to Trust as a gift and did not allocate any of Grantor's GST exemption to the transfer; rather, it reported a transfer made to a different trust and allocated a portion of Grantor's available GST exemption thereto.

Grantor and Spouse retained Accounting Firm B in Year 2. Accounting Firm B discovered the omission of the transfer from Grantor's Year 1 Form 709 and prepared an amended Year 1 Form 709 that reported the transfer and allocated a portion of Grantor's GST exemption thereto.

The trustees of Trust have not distributed any income or principal from Trust to date.

Grantor requests an extension of time under § 301.9100-3 to allocate a portion of her GST exemption to the amount of the transfer to Trust.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a)(1) provides, generally, that the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust where the property passes to a skip person with respect to the transferor of the property. Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person other than a taxable termination or a direct skip. Section 2612(c)(1) provides that a "direct skip" is a transfer subject to federal estate or gift tax made by a transferor to a skip person.

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.

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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 the GST exemption to any transfer 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 § 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, 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.

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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, Grantor is granted an extension of time of sixty (60) days from the date of this letter to make a retroactive allocation of her available GST exemption with respect to the transfer to Trust in Year 1. The allocation will be effective as of the date of the transfer to the trust in Year 1, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated to the trust. The allocation should be made on a supplemental Form 709 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.

The ruling contained in this letter is 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.

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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's representative.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter