

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:

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Date:

December 01, 2003

Re:

**LEGEND:**

Taxpayer =

Spouse =

Trust 1 =

Trust 2 =

Trust Agreement =

Attorney =

Accountant =

Date 1 =

Date 2 =

Date 3 =

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\$W =  
\$X =  
\$Y =  
\$Z =  
\$a =  
\$XX =

Dear :

This is in response to your letter on behalf of Taxpayer and Spouse received March 4, 2003, and subsequent submissions, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g)(1) of the Internal Revenue Code to make allocations of generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows. On Date 1, Taxpayer executed Trust Agreement establishing Trust 1 and Trust 2. Each trust is for the benefit of one of Taxpayer's and Spouse's two children and the respective child's living descendants. Other than the beneficiaries, the terms governing Trust 1 and Trust 2 are identical.

Article 3.1 of Trust Agreement provides that the trustee of each Trust may distribute so much of the net income, the corpus, or both to or for the benefit of any one or more of the beneficiaries as the trustee deems to be in the best interests of the respective beneficiary. Upon the death of any beneficiary, the trustee may pay, free of trust, to such beneficiary's estate so much of the Trust estate as the trustee may, in the trustee's sole and absolute discretion, determine to be desirable.

Article 3.3 provides that, after the death of the last to die of Taxpayer and Spouse, the child who is primary beneficiary of each Trust may, at any time during the child's life after attaining the age of thirty-five years, appoint all or any part of the Trust to or for the benefit of any one or more of the then-living descendants of Taxpayer (other than such child) and, upon the child's death, to or for the benefit of any one or more of the child's spouse and the then-living descendants of Taxpayer. Any appointment to a child's spouse shall be only of net income for a period not exceeding the first to occur of such spouse's death or remarriage.

Article 3.4 provides that, upon the last to occur of the death of Taxpayer, Spouse, and the child who is the primary beneficiary of a respective trust, the trustee of that

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Trust shall divide the remaining unappointed Trust estate into shares, per stirpes, among the then-living descendants of such child. If there is no then-living descendant of such child, the trustee shall divide the remaining unappointed Trust estate into shares, per stirpes, among the then-living descendants of Taxpayer. Each share shall be retained as a separate "Descendant's Trust" for the benefit of the descendant for whom it was created and the descendants of that primary descendant.

Article 4.1 provides that the trustee of each Descendant's Trust may distribute so much of the net income, the corpus, or both to or for the benefit of any one of the beneficiaries of such trust as the trustee deems to be in the best interests of the respective beneficiary. Upon the death of any beneficiary, the trustee may pay, free of trust, to such beneficiary's estate so much of the trust estate of such trust as the trustee may, in the trustee's sole and absolute discretion, determine to be desirable.

Article 6.2 provides that, notwithstanding any provision to the contrary, neither a separate trust or any share or portion thereof shall be held in trust for longer than, nor any estate or trust created by the exercise of any power of appointment under the Trust Agreement shall terminate later than, twenty-one years after the date of death of the last survivor of a group consisting of Taxpayer, all descendants of Taxpayer who are living on the date the Trust Agreement is executed, all persons mentioned by name in the Trust Agreement, and all descendants of said mentioned persons who are living on the date the Trust Agreement is executed.

Also on Date 1, Taxpayer transferred stock and limited partner interests in a family limited partnership to Trust 1 and Trust 2. Taxpayer valued the assets transferred to Trust 1 in the aggregate at \$W, and the assets transferred to Trust 2 in the aggregate at \$X.

Attorney advised Taxpayer on establishing Trust 1 and Trust 2 and drafted the Trust Agreement. Attorney notified Accountant of the purpose of the trusts, and provided Accountant with copies of the documents creating the Trusts and recording the Date 1 transfers. Attorney also instructed Accountant to prepare gift tax returns for Taxpayer and Spouse reporting the Date 1 transfers and to elect under § 2513 to treat the transfer as made one-half by Taxpayer and one-half by Spouse. Finally, Attorney instructed Accountant to allocate Taxpayer's and Spouse's GST exemptions to the reported transfers. Taxpayer and Spouse had not previously allocated any of their available GST exemptions to any transfer of property.

On timely filed Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns, prepared by Accountant, Taxpayer and Spouse elected to treat the Date 1 transfers as split gifts made one-half by each. Taxpayer and Spouse each reported gifts to the beneficiaries of Trust 1 valued in the aggregate at \$Y, and gifts to the

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beneficiaries of Trust 2 valued at \$Z. On Schedule C of the returns, however, Accountant mistakenly allocated only \$XX of Taxpayer's and Spouse's GST exemptions to the reported transfers to Trust 1, and allocated no GST exemption to their reported transfers to Trust 2.

On Date 3, Taxpayer and Spouse each transferred equal limited partner interests in their family limited partnership to Trust 1 and to Trust 2. These gifts, valued by Taxpayer and Spouse at \$a, were reported on timely filed federal gift tax returns for Taxpayer and Spouse prepared by Accountant. Accountant mistakenly believed, however, that the value of each transfer for GST tax purposes was zero and, thus, allocated no GST exemption to Taxpayer's and Spouse's Date 3 gifts.

In a subsequent review of Taxpayer's and Spouse's gift tax returns, Accountant discovered that an insufficient amount of GST exemption had been allocated to the Date 1 transfers to Trust 1 and Trust 2, and that no GST exemption had been allocated to the Date 3 transfers to Trust 1 and Trust 2.

Taxpayer and Spouse have represented that they were not knowledgeable about tax matters and relied on Accountant to ensure that their available GST exemptions were allocated to the entire amounts of the reported transfers to Trust 1 and Trust 2 on Date 1 and Date 3. Taxpayer and Spouse have also represented that no distributions to a skip person have been made from either trust.

Taxpayer and Spouse have requested: (1) an extension of time under § 2642(g) and § 301.9100-3 to make allocations of their GST exemptions to the transfers to Trust 1 and Trust 2 on Date 1 and Date 3; and (2) that the allocations be effective and be based on the value of the property transferred to the trusts as of Date 1 and Date 3, respectively.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer (GST) 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) 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, 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

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(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 and Spouse are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer's and Spouse's available GST exemptions to the Date 1 and Date 3 transfers to Trust 1 and Trust 2. The allocations will be effective as of the date of the respective transfers to Trust 1 and Trust 2. The finally determined gift tax values of the transfers to the Trusts will be used in determining the amount of Taxpayer's and Spouse's GST exemption to be allocated to each Trust. The GST exemption allocations pertaining to the Date 1 transfers, therefore, will be based on the gift tax value of the Date 1 transfers to Trust 1 and Trust 2, and the GST exemption allocations pertaining to the Date 3 transfers will be based on the gift tax value of the Date 3 transfers to Trust 1 and Trust 2.

These allocations should be made on supplemental Forms 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 each 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

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provisions of the Code, including whether the Trust Agreement provides either of the children who are the primary beneficiaries of Trust 1 and Trust 2 with a general power of appointment, as that term is defined in § 2041(b). We express or imply no opinion regarding the gift tax value of the property transferred to Trust 1 and to Trust 2 on Date 1 and Date 3.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer and Spouse.

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  
(Office of Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc: