

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09 – PLR-144301-03

Date:

December 17, 2003

LEGEND:

Taxpayer =

Trust =

Date 1 =

Date 2 =

Date 3 =

X =

Y =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =
Year 7 =
Attorney =
Return Preparer =

Dear

This is in response to your letter dated June 27, 2003, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Taxpayer's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer created the Trust, an irrevocable trust for the benefit of Taxpayer's descendants.

Paragraph First, section A of the Trust provides that the net unused income shall be accumulated and added to principal. Paragraph First, section B provides, in part, that a disinterested trustee may distribute all or any part or parts of the principal not then subject to rights of withdrawal as such trustee considers appropriate for the benefit of Taxpayer's issue and the trustee may also distribute principal to a trust established by the trustee.

Paragraph Twelfth provides that during Taxpayer's life, after each gift deemed for purposes of the Internal Revenue Code to have been made to the trust, each of Taxpayer's living issue may withdraw an amount equal to the gift divided by the number of persons eligible to make withdrawals.

Paragraph Second contains the provisions after Taxpayer's death. Upon Taxpayer's death, the trust under Paragraph First shall terminate and the trustees shall divide the principal into as many separate and equal trusts as there are children of Taxpayer living. The trustees shall distribute one trust to the issue of each deceased child, per stirpes. The net income of each trust shall be paid to the beneficiary at least quarterly for life and the trustee may distribute principal for support, education, and health care of the beneficiary. At the beneficiary's death, all unappointed principal shall be paid, per stirpes, to the beneficiary's living issue or their trust if under age 45, or if none, to Taxpayer's living issue or to such living issue's trust.

Paragraph Third provides provisions for trusts established for Taxpayer's grandchildren or more remote descendants who have not reached age 45 at the time principal is otherwise required to be paid to them.

In Year 1, Taxpayer, upon the advice of Return Preparer and Attorney, established the Trust for the benefit of her children and their issue. The Trust was intended to be exempt from the GST tax. The instructions from Attorney to Return Preparer state that Taxpayer would need to file annual gift tax returns to allocate her GST exemption to the Trust and that Return Preparer would prepare the returns.

On Date 2 in Year 1, Taxpayer gifted \$x to the Trust. On Date 3 in Year 1, Taxpayer gifted property with a reported fair market value of \$y. According to Return Preparer's records, a Form 709 was filed on a timely basis by Return Preparer on behalf of Taxpayer for Year 1. The Year 1 Form 709 reported the Year 1 transfers to the Trust, but did not allocate any of Taxpayer's GST tax exemption to the Trust. Upon reviewing the filed Year 1 Form 709, Attorney discovered that an allocation of Taxpayer's GST exemption was not made on the Year 1 Form 709. In a letter dated in Year 2, from Attorney to Return Preparer, Attorney confirmed with Return Preparer that Return Preparer would prepare an amended Year 1 Form 709 making a late allocation of Taxpayer's GST exemption to the Trust. However, Return Preparer failed to file an amended Form 709 for Year 1 and failed to file Form 709 for Years 2, 3, 4, 5, 6, and 7, years in which Taxpayer made further transfers to the Trust. Form 709s were not filed for any of these years. Accordingly, none of Taxpayer's GST exemption was allocated to the transfers made in Year 1 through Year 7.

You have requested: 1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer's GST tax exemption to the transfers to the Trust made in Year 1 through Year 7; and 2) that such allocations are to be made based on the value of the transferred assets to the Trust as of the respective dates of the original transfers.

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

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

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 § 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, we grant an extension of time of 90 days from the date of this letter for Taxpayer to make allocations of her GST exemption to the transfers to the Trust in Years 1, 2, 3, 4, 5, 6, and 7. The allocations will be effective as of the dates of the transfers to the Trust, and the gift tax values of the transfers will be used in determining the amount of GST exemption to be allocated to each transfer.

Allocations of Taxpayer's GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each supplemental Form 709. Copies are enclosed for this purpose.

Except as specifically ruled herein, we express or imply no opinion of 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 representative.

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

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
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures

Copies of Letter
Copy for 6110 purposes