

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PRL-144586-02

Date:

October 30, 2002

Legend

Date 1 =
Spouse =

Law Firm =
Tax Preparer 1 =
Taxpayer =

Year 1 =
Date 2 =
Trust 1 =

Trust 2 =

A =
B =
Date 3 =
Shares =
\$X =
Year 2 =
Tax Preparer 2 =
Date 4 =
Date 5 =
Date 6 =
\$Y =

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Dear _____ :

This is in response to your letter dated August 7, 2002, 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 an allocation of the Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Spouse met with Law Firm and Tax Preparer 1 to discuss estate planning matters. At the meeting, Spouse requested that Law Firm prepare two trust agreements, one for the benefit of each of his sons and their respective issue. The parties further discussed that Spouse's and Taxpayer's GST exemption would be allocated to the property transferred to the trusts on their Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns and any subsequent gift tax returns that reported a gift to the trusts. On Date 2, Spouse and Taxpayer executed two trust agreements, one creating Trust 1 and one creating Trust 2.

Article FIRST of Trust 1 provides that the trustees shall pay to or apply for the benefit of A, so much of the income and principal as the trustees determine. In addition, the trustees are authorized to pay on behalf of any issue of A sums out of principal to such educational organizations or to such persons who provide medical care as would not be a gift pursuant to § 2503(e). Upon the death of A, the principal of the trust is to be held in separate trust for the issue of A then living, or in default thereof, to the issue of the grantors then living, in such shares as the trustees determine. The trust shall continue no longer than twenty-one years after the death of the survivor of all of the issue of the grantors living at the time of the creation of the trust. If any of the trust is still then in effect, the principal shall be distributed absolutely to the then living issue of A, or in default thereof, to the then living issue of the grantors, in equal shares per stirpes.

Article SECOND of Trust 1 provides that whenever the trust property is directed to be distributed absolutely to a person who has not then attained the age of twenty-one, the trustees may, in their discretion, retain such property in separate trust for said person and pay to or apply so much or all of the net income and principal for his or her support, education and maintenance, as the trustees determine. Upon attaining the age of twenty-one, the principal shall be distributed to him or her absolutely.

The terms of Trust 2 are identical to those of Trust 1, except that B is the primary beneficiary of Trust 2.

On Date 3, Taxpayer transferred Shares, which she valued at \$X for gift tax purposes, to each trust. Spouse and Taxpayer elected to split the gifts and intended to allocate their respective GST exemption to the property transferred. Tax Preparer 1 filed the Year 1 Form 709, however, he inadvertently failed to allocate Spouse's and

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Taxpayer's GST exemption to the property transferred to Trust 1 and Trust 2.

In Year 2, Spouse and Taxpayer retained Tax Preparer 2 to handle their tax matters. On Date 4, Date 5, and Date 6, Taxpayer gifted additional Shares, which she valued at \$Y for gift tax purposes, to each trust. Spouse and Taxpayer elected to split these gifts and intended to allocate their respective GST exemption to the property transferred. Spouse informed Tax Preparer 2's bookkeeper of Taxpayer's gifts to Trust 1 and Trust 2, however, the bookkeeper misunderstood the significance of the characterization of the gifts and informed Tax Preparer 2 that the gifts were made to A and B individually. Tax Preparer 2 reported the gifts as made outright to A and B and believed that the allocation of the GST exemption was inapplicable. As a result, Spouse's and Taxpayer's GST exemption was not allocated to the gifts made on Date 4, Date 5, and Date 6. During an estate plan review, Law Firm discovered that Spouse's and Taxpayer's GST exemption had not been allocated for the gifts made on Date 3, Date 4, Date 5, and Date 6.

Taxpayer has requested an extension of time under § 2642(g) and § 301.9100-3 to make an allocation of her GST exemption to Trust 1 and Trust 2.

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 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

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) of the Generation-Skipping Transfer Tax Regulations provides 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.

Section 2652(a)(2) provides that, if under § 2513, one-half of a gift is treated as made by the individual, and one-half if treated as being made by the individual's spouse, then such gift shall be so treated for GST tax purposes.

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

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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 this paragraph.

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.

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.

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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 allocations of her available GST exemption, with respect to the Date 3, Date 4, Date 5, and Date 6 transfers to Trust 1 and Trust 2. The allocation with respect to each transfer will be effective as of the date of the transfer to Trust 1 or Trust 2, as applicable, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated.

The allocations should be made on supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Returns and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the 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.

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.

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

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter