

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B9-PLR-151341-02  
Date:  
November 13, 2002

Legend

Date 1 =  
Grantor =

Trust =  
X =

Date 2 =  
Y =  
Date 3 =  
Accountant =  
Year 1 =  
Date 4 =  
Date 5 =

Dear :

This is in response to your letter dated September 9, 2002, requesting an extension of time under to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Grantor created Trust for the benefit of his spouse and his descendants and their spouses.

Article SECOND of Trust provides that until the death of Grantor, the trustee shall pay over or apply the net income and principal, in such amounts as the trustee may determine, to or for the benefit of such one or more members of the class consisting of the Grantor's spouse, the Grantor's descendants, and the spouses of such descendants.

Article THIRD, paragraph A provides that upon the death of Grantor, the trustee is authorized to make distributions of principal to Grantor's descendants as the trustee may determine appropriate to substantially equalize, on a per stirpital basis, any material unequal distributions of principal made under Article SECOND.

Article THIRD, paragraph B provides that after making or providing for any equalizing distributions, the trustee shall divide the balance of the trust estate into as many equal shares as may be necessary to set aside one such share for each child of Grantor living at the time of division, and one such share for the collective descendants then living of each child of Grantor who previously died. Any share for the collective descendants shall be further divided into separate shares, per stirpes. Each share and sub-share shall be held as a separate trust with income and principal payable at the discretion of the trustee to or for the benefit of such one or more of the Grantor's spouse, the beneficiary, the beneficiary's spouse, and the beneficiary's descendants. Upon the death of the beneficiary, the principal of the trust shall be paid over to such person or persons as the beneficiary may appoint by specific reference to this power of appointment in his or her last will and to the extent not appointed, to his or her descendants then living, per stirpes, or if none, to the descendants then living of the parents of the beneficiary who is a descendant of the Grantor, or if none, then to the Grantor's descendants then living, per stirpes.

Grantor transferred X to Trust on Date 2, and subsequently transferred Y on Date 3. After making these transfers, Grantor directed Accountant to allocate his GST exemption to the transfers on his Year 1 United States Gift (and Generation-Skipping Transfer) Tax Return. Accountant, however, did not file the Year 1 gift tax return until Date 4 and allocated Grantor's GST exemption based upon the value of the transfers as of Date 5.

Grantor requests an extension of time under § 2642(g) and § 301.9100-3 to allocate his GST exemption to the transfers to Trust, such that the date of each transfer would be deemed the effective date of the allocation of the GST exemption.

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 2642(a) provides the method for determining the inclusion ratio.

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)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a) 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) 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.

As applicable to the transfers made during the years under consideration, § 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] --

(A) the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides 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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted 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, the time for making the allocation 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, Grantor is granted an extension of time of 60 days from the date of this letter to make allocations of his available GST exemption to his Date 1 and Date 2 transfers to Trust. The allocations will be effective as of the date of the transfers to Trust, and the allocations will be made based on the value of the property transferred to Trust as of the date of the transfers.

The allocation for the transfers should be made on a supplemental Form 709. The form should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the form. A copy is attached 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 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 your authorized representatives.

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter