

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

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Refer Reply To:

CC:PSI:9-PLR-132981-03

Date:

September 24, 2003

In Re:

LEGEND:

Grantor =

Date 1 =

Year 1 =

Child 1 Trust =

Child 2 Trust =

Child 3 Trust =

Child 1 =

Child 2 =

Child 3 =

\$a =

Date 2 =

CPA =

Dear . . . :

This is in response to your letter dated April 4, 2003, sent on behalf of Grantor, 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

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allocations of generation-skipping transfer (GST) exemption to lifetime transfers made to three irrevocable trusts.

The facts and representations submitted are summarized as follows: On Date 1, Year 1, Grantor established Child 1 Trust, Child 2 Trust, and Child 3 Trust. These trusts are irrevocable trusts intended to benefit Child 1, Child 2, and Child 3, respectively, and his or her issue. Aside from the differing beneficiaries, the distribution provisions of Child 1 Trust, Child 2 Trust, and Child 3 Trust are identical.

Item 1, paragraph (a) of the trusts provides that during the child beneficiary's lifetime, the trustee shall distribute to or for the benefit of the child beneficiary and/or any of the child beneficiary's issue as much of the income and/or principal of the trust as the trustee deems necessary to provide for the health, maintenance, and support of the child beneficiary and the child beneficiary's issue in accordance with their accustomed standard of living and to provide for the education of the child beneficiary and his or her issue.

Item 1, paragraph (b) of the trusts provides that after the death of the child beneficiary, the trust shall terminate and all property then remaining in the trust shall be distributed as follows:

- (1) If the remaining property has an inclusion ratio of one, the remaining property shall be distributed to such persons, including the child beneficiary's estate, and in such manner, as the child beneficiary may direct by the child beneficiary's last will and testament by express reference to this power.
- (2) If the remaining property has an inclusion ratio of zero or less than one, the remaining property shall be distributed to, among, or for the benefit of such persons, and in such manner, as the child beneficiary may direct by the child beneficiary's last will and testament by express reference to this power; provided, however, the child beneficiary shall have no power to appoint such property to the child beneficiary, to the child beneficiary's estate, to the child beneficiary's creditors, to the creditors of the child beneficiary's estate, or to discharge any legal obligation that the child beneficiary may have.
- (3) If or to the extent the child beneficiary does not effectively exercise this power of appointment granted in (1) or (2) above, the remaining property shall be distributed per stirpes among the child beneficiary's issue who survive the beneficiary, if any, and if none, such property shall be distributed per stirpes among Grantor's issue who survive the child beneficiary, if any, and if none, such property shall be distributed to the child beneficiary's heirs.

Grantor transferred \$a each to Child 1 Trust, Child 2 Trust, and Child 3 Trust on Date 1, Year 1. In a letter dated Date 2, Year 1, Grantor was advised by the attorney who drafted the trusts that the allocation of her GST exemption to the trusts would

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cause distributions from the trusts to her grandchildren to be exempt from the GST tax. Grantor was further advised that in order to ensure that distributions from the trusts would be so exempt, Grantor would have to file gift tax returns on which she must allocate her GST exemption to all contributions to each trust for each year during which a gift of any size is made to any such trust. Grantor relied on CPA to prepare her gift tax return for Year 1. CPA had received a copy of the letter from Grantor's attorney and was on notice of the need to allocate Grantor's GST exemption to the trusts. Grantor believed CPA would make all necessary allocations.

CPA prepared a Year 1 Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Grantor, which was timely filed. However, CPA made several errors that resulted in the failure to properly allocate Grantor's available GST exemption to the amount of the transfers to Child 1 Trust, Child 2 Trust, and Child 3 Trust. Grantor relied on CPA and did not discover the errors.

Grantor's attorney discovered the errors on the Year 1 Form 709 and advised Grantor thereof. Grantor now seeks an extension of time under § 2642(g) and § 301.9100-3, to allocate Grantor's available GST exemption to the amount of the transfers to the trusts made in Year 1, based on the value of the transferred assets as of the date 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 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 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.

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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.

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.

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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 retroactive allocations of her available GST exemption with respect to the transfers to Child 1 Trust, Child 2 Trust, and Child 3 Trust in Year 1. The allocation will be effective as of the date of the transfers to the trusts in Year 1 and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to the transfers to the trusts. The allocation should be made on a supplemental gift tax return filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the gift tax return. 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. In addition, we express or imply no opinion regarding the value of the property transferred to the trusts.

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.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: