

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B09-PLR-102239-02  
Date:  
May 14, 2002

Re: Private Letter Ruling Request

**LEGEND**

Taxpayer =

Date 1 =

State =

Trust 1 =

Son =

Trust 2 =

Daughter =

Spouse =

a =

T Corporation =

\$w =

b =

\$x =

Year 1 =

Date 2 =

PLR-102239-02

Date 3 =  
 Date 4 =  
c =  
 \$y =  
 Year 2 =  
 Date 5 =  
d =  
 \$z =  
 Year 3 =  
 Year 4 =

Dear

This is in response to your letter dated November 26, 2001, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make a late allocation of Taxpayer's generation-skipping transfer ("GST") tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer, a resident of State, established two identical trusts: Trust 1 for the benefit of Son and his descendants, and Trust 2 for the benefit of Daughter and her descendants.

Section 2, Paragraph A of Trust 1 and Trust 2 provides, in part, that during the life of each child, the trustee has the discretion to distribute to Son or Daughter such amounts from principal of the trust as the trustee determines to be necessary. In addition, the trustee shall distribute to Son or Daughter all the current net income of the trust in convenient, but at least annual, installments.

Section 2, Paragraph D provides, in part, as follows:

If [Son or Daughter] dies before receiving full distribution of the Trust .... then the trust estate shall be divided into equal shares, one share for each of [Son or Daughter's] children who are then living and one share for each of [Son or Daughter's] children who are not then living but who are survived by issue then living. Each share for the issue of a deceased child of [Son or Daughter] shall be further divided per stirpes into shares. Each such share shall be held as a separate trust. All trusts so created shall be held upon the terms and conditions

PLR-102239-02

hereinafter described and each trust shall be known by the name of the issue who is the beneficiary of such trust.

Section 2, Paragraph D(1) provides that with regard to any trusts established for the benefit of any issue of Son or Daughter, the trustee has the discretion to distribute to a beneficiary such amounts from principal of the trust as the trustee determines to be necessary.

Section 2, Paragraph D(2) provides that with regard to any trusts established for the benefit of any issue of Son or Daughter, the trustee shall distribute to a beneficiary the current net income of his or her trust, in convenient, but at least annual, installments. In addition, when a beneficiary reaches the age of thirty (30) years, the trustee is directed to distribute to the beneficiary one-third (1/3) of the principal of his or her trust, in fee simple and free of trust. When a beneficiary reaches the age of thirty-five (35) years, the trustee is directed to distribute to the beneficiary one-half (1/2) of the principal of his or her trust, in fee simple and free of trust. When a beneficiary reaches the age of forty (40) years, the trustee is directed to distribute to the beneficiary the balance of his or her trust, in fee simple and free of trust, and the trust for the beneficiary shall terminate.

During Year 1, Taxpayer and Spouse each gifted a shares of T Corporation stock, with a reported fair market value of \$w, to Trust 1 and b shares of T Corporation stock, with a reported fair market value of \$x, to Trust 2. Taxpayer and Spouse each filed a Form 709, United States Gift Tax Return, for Year 1. Both forms were prepared by Taxpayer's accountant and reflected Taxpayer's and Spouse's intention that the gifts made to Trust 1 and Trust 2 be deemed to have been made as one-half by each of them. Although the gift tax returns reported the transfers of the shares of stock to Trust 1 and Trust 2, the returns failed to allocate any of Taxpayer's or Spouse's GST exemption to these gifts. Spouse made no additional gifts to Trust 1 and Trust 2 after Date 1. Taxpayer and Spouse divorced on Date 2, and Spouse died on Date 3.

On Date 4, Taxpayer gifted c shares of T Corporation stock, with a reported fair market value of \$y, to each of Trust 1 and Trust 2. Taxpayer filed a Form 709 for Year 2. The Form 709, as prepared by Taxpayer's accountant, reported Taxpayer's transfers of stock to Trust 1 and Trust 2, but made no allocation of Taxpayer's GST exemption to these gifts.

On Date 5, Taxpayer gifted d shares of T Corporation stock, with a reported fair market value of \$z, to each of Trust 1 and Trust 2. Taxpayer filed a Form 709 for Year 3. The Form 709 was prepared by Taxpayer's accountant. Taxpayer reported the transfers of stock to Trust 1 and Trust 2, but made no allocation of her GST exemption to these gifts.

PLR-102239-02

In Year 4, Taxpayer's accountant realized that a portion of Taxpayer's GST exemption should have been allocated to the gifts reported on Taxpayer's gift tax returns filed for Year 1, Year 2 and Year 3. Upon learning of this omission, Taxpayer's accountant contacted an attorney to determine whether any steps could be taken to remedy Taxpayer's failure to allocate her GST exemption to the gifts reported on those returns. The attorney advised Taxpayer that nothing could be done because retroactive relief was not available at that time.

Taxpayer now requests an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Taxpayer's available GST exemption to the gifts made or deemed to have been made by her to Trust 1 and Trust 2 in Year 1, Year 2 and Year 3. This ruling does not address the portions of the gifts deemed to have been made by Spouse on Date 1 to Trust 1 and Trust 2 and no representations have been made as to whether any of Spouse's GST exemption has ever been allocated to such contributions.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) provides that the term "generation-skipping transfer" means: (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 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)(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 2632(e)(1) provides that, in general, any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows— (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(b)(2) of the GST Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is being made, the amount of GST exemption being allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of allocation.

PLR-102239-02

Section 2642(b)(1) provides that, if the allocation of GST exemption to any transfers 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.

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, 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 of the Procedure and Administration Regulations.

Under § 301.9100-1(c), the Commissioner may 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 Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections.

PLR-102239-02

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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, 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 GST trust are to be treated as if not expressly prescribed by statute. Accordingly, Taxpayer 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 subject to § 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 the grant of 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 file supplemental gift tax returns for Year 1, Year 2 and Year 3, on which Taxpayer will allocate a portion of her GST exemption as follows: \$w to the gifts made by Taxpayer to Trust 1 in Year 1; \$x to the gifts made by Taxpayer to Trust 2 in Year 1; \$y to the gifts made by Taxpayer to Trust 1 in Year 2; \$y to the gifts made by Taxpayer to Trust 2 in Year 2; \$z to the gifts made by Taxpayer to Trust 1 in Year 3; and \$z to the gifts made by Taxpayer to Trust 2 in Year 3. Taxpayer's allocations for Year 1 will be effective as of the dates of Taxpayer's Year 1 transfers to Trust 1 and Trust 2. Taxpayer's allocations for Year 2 will be effective as of the date of the Year 2 transfers to Trust 1 and Trust 2. Taxpayer's allocations for Year 3 will be effective as the date of the Year 3 transfers to Trust 1 and Trust 2.

Except as provided above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We note, however, that the extension of time granted to Taxpayer to make a late allocation of a portion of her GST exemption to Trust 1 and Trust 2 applies only to the contributions made or deemed to have been made to Trust 1 and Trust 2 by Taxpayer.

PLR-102239-02

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 Taxpayer's authorized representative.

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,

Paul F. Kugler

Paul F. Kugler  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy of letter  
Copy for 6110 purposes