

**Internal Revenue Service**

Department of the Treasury

Number: **200248012**

Washington, DC 20224

Release Date: 11/29/2002

Index Number: 2632.01-00; 9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-130078-02

Date:

August 22, 2002

Re:

Legend

Taxpayer =

Date 1 =

Trust =

Date 2 =

X =

Year 1 =

Date 3 =

Date 4 =

Child 1 =

Child 2 =

Child 3 =

Dear :

This is in response to your letter dated March 26, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) Tax exemption.

The facts and representations submitted are summarized as follows: Taxpayer was advised by an estate-planning attorney that he could set up a GST trust for the benefit of his children and descendants and take advantage of his \$1,000,000 GST exemption. It was further explained that a maximum of \$600,000 could be transferred to the GST trust without incurring any gift tax liability. As a result, on Date 1, Taxpayer established Trust, an irrevocable trust, for the benefit of his children and their descendants.

Article I, Paragraph 1 of Trust governs the shares of Trust set aside for each of taxpayer's children, Child1, Child 2, and Child 3. The trustee shall pay to or expend for

the benefit of the child all net income arising from his or her share. In addition, the trustee is authorized, from time to time, to pay or expend so much of the corpus of such child's share as the trustee, in its sole discretion, deems necessary for the health, support, maintenance and education of the child and of his or her issue. Upon the death of the child, he or she shall have a limited power of appointment, exercisable by his or her last will and testament, to direct the disposition of the corpus of his or her share to, or in trust for, any of his or her issue or to, or in trust for, his or her spouse for life with remainder to any of his or her issue. If the child fails to exercise this power of appointment over his or her share, then upon child's death, his or her share, or so much thereof as is not disposed of by the power of appointment, shall be divided into shares, per stirpes, to the child's then living issue, to be held, administered and disposed of according to Paragraph 2.

Article I, Paragraph 2 governs the shares set aside for the issue of any child pursuant to Paragraph 1. All shares are to be retained in trust as separate and distinct trust funds for the respective benefit of the persons on whose account each share was set aside (beneficiary).

Article I, Paragraph 2, subparagraph A provides that, until the beneficiary attains the age of twenty-one, the trustee, in its sole discretion, is authorized to pay or expend so much of the net income of beneficiary's share as deemed necessary for his or her health, support, maintenance and education, adding to the corpus any net income not paid or expended in any year.

Article I, Paragraph 2, subparagraphs B and C provide that, at the age of twenty-one, the beneficiary is entitled to all net income from his or her share. At the age of twenty-five, the trustee shall pay over and deliver to him or her one-half of the corpus of his or her share and shall pay to or expend for the benefit of the beneficiary, all net income from the remainder of his or her share until he or she attains the age of thirty.

Article I, Paragraph 2, subparagraph D provides that, at the age of thirty, the trustee shall pay over and deliver to the beneficiary the remainder of his or her share.

Article I, Paragraph 2, subparagraph E provides that, while the beneficiary's share is being held by the trustee, the trustee is authorized to pay to or expend for the beneficiary's benefit so much of the corpus of his or her share as the trustee, in its sole discretion, deems necessary for the beneficiary's health, support, maintenance and education.

Article I, Paragraph 2, subparagraph F provides that upon such beneficiary's dying prior to attaining the age of thirty, he or she shall have a limited power of appointment, exercisable by his or her last will and testament, to direct the corpus of his or her share to or in trust for any of his or her issue or to or in trust for his or her spouse for life with the remainder to any of his or her issue. If the beneficiary fails to exercise

the power of appointment, then upon the beneficiary's death, his or her share or so much as not disposed of by the power of appointment, shall be paid and delivered as follows: (1) to his or her then living issue, per stirpes, but if there be none, then (2) in equal shares to each of the beneficiary's then living brothers and sisters and the then living issue of each deceased brother or sister, per stirpes, but if there be none, then (3) to taxpayer's then living issue per stirpes, (4) but if any such person shall then be a beneficiary of any trust created herein, his or her share will be added to and administered as part of the trust created herein for him or her.

On Date 2, Taxpayer transferred X to the Trust with the assistance of his broker. Taxpayer's attorney and accountant were not advised of the transfer to the Trust and were not asked for advice regarding the transfer. It is represented that Taxpayer was unaware of the necessity of filing a gift tax return and the required election to allocate his GST exemption. As a result, Taxpayer did not file a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1 and no allocation of Taxpayer's GST exemption was made for the Date 2 transfer to Trust.

Taxpayer died on Date 3. Taxpayer's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed on Date 4.

Taxpayer's estate has requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make an allocation of Taxpayer's GST exemption; and (2) that such allocation be made based on the value of the transferred assets on the date transferred.

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) 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 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 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.

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)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for 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's estate is granted an extension of time of 60 days from the date of this letter to make an allocation of Taxpayer's available GST exemption, with respect to Taxpayer's transfer to Trust. The allocation will be effective as Date 2, the date of the transfer to Trust, and the gift tax value of the transfer to Trust will be used in determining the amount of GST exemption to be allocated to Trust.

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. The allocation should be made on a supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,  
Heather Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter