

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:9-PLR-148071-02
Date:
December 17, 2002

LEGEND:

Decedent =
Settlor =
Trust =
Children =

Grandchildren =

Attorney =
Trustee 1 =
Trustee 2 =
Trustee 3 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =

PLR-148071-02

Year 10 =
Year 11 =

a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =

aa =
bb =
cc =
dd =

Dear :

This is in response to your letter dated August 23, 2002, sent on behalf of the trustees of Trust, 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 allocations of Decedent's generation-skipping transfer (GST) exemption to lifetime transfers made to an irrevocable trust.

The facts and representations submitted are summarized as follows: On Date 1, Decedent, also referred to herein as "Settlor," established Trust. Trust was an irrevocable trust intended to benefit Children and Grandchildren of Decedent. Decedent died on Date 2.

Article VII, Paragraph A of Trust and the subsections thereunder provide the terms for administering Trust after the death of Settlor.

Article VII, Paragraph A provides that upon Settlor's death, the trustee shall divide the trust into as many equal shares as there are children of Settlor then living and children of Settlor's then deceased leaving issue then living.

Article VII, Paragraph A(a) of Trust provides that to the maximum extent possible all GST exempt assets shall be allocated equally to the shares of the living children before any of such exempt assets are allocated to the shares for the issue of a deceased child.

PLR-148071-02

Article VII, Paragraph A(b) of Trust provides that to the maximum extent possible all assets of which the Settlor is the transferor for GST purposes shall be allocated equally to the shares for the living issue of a deceased child before any of such assets are allocated to the shares of the living children.

Article VII, Paragraph A(c) of Trust provides that if the value of a child's share exceeds the amount of the exempt assets allocated to that child's share, then the shares allocated to each living child shall be further divided into two shares by the trustee before establishing the child's trust, and the trustee shall instead establish for that child two separate trusts: one trust that is exempt for GST purposes (the child's "Exempt" Trust) and a second trust consisting of the balance of the trust estate allocated to the child (the child's "Non-Exempt" Trust).

Article VII, Paragraph A(e) of Trust provides that each share allocated to a living child of Settlor shall be administered by the trustee in a separate trust.

Article VII, Paragraph A(e)(1) of Trust provides that the trustee shall pay to each child for his life all of the net income of the trusts quarterly or at more frequent intervals.

Article VII, Paragraph A(e)(2) of Trust provides that if the trustee other than the child beneficiary deems the net income to be insufficient, the trustee in his or her discretion shall pay to or apply for the benefit of each child so much of the principal as the trustee deems necessary for the child's support, comfort, health, care and general welfare, after taking into consideration any other resources of the child.

Article VII, Paragraph A(e)(6) of Trust provides that during the life of each child, the trustee shall distribute all or any part of the Exempt Trust and Non-Exempt Trust to or for the benefit of any one or more of a group consisting of the child's spouse, issue or spouse of issue, as the child shall appoint by written instrument delivered during the lifetime of the child to the trustee.

Article VII, Paragraph A(e)(9) of Trust provides that upon the death of each child, the trustee shall divide the unappointed child's trusts into as many equal shares as there are children of such deceased child then living and children of such deceased child then deceased leaving issue then living, and the trustee shall fund and shall continue to hold such equal shares in trust for their benefit, as further provided in this paragraph.

Article VII, Paragraph A(f) of Trust provides that each share allocated to a group composed of living issue of a deceased child of Settlor shall be distributed or retained in a separate trust.

Article VII, Paragraph A(f)(1) of Trust provides that so long as any grandchild has not attained the age of twenty-one years, the trustee shall pay to or apply for the benefit of such grandchildren, including those who are age twenty-one or older, as much of the

PLR-148071-02

net income and principal as the trustee deems necessary for their respective reasonable health, education, support, maintenance, comfort and general welfare, after taking into consideration any other income or resources of such grandchildren available for these purposes. In addition, the trustee may apply net income and principal of the trust for the support of the issue and surviving spouse of any deceased grandchild.

Article VII, Paragraph A(f)(3) of Trust provides that as soon as there is no child of said deceased child who is living and under the age of twenty-one years, then the trustee shall divide the balance in said deceased child's trust estate into as many equal shares as there are children of his or hers then living and children of his or hers then deceased leaving issue then living, to be distributed or retained in trust as further provided in Trust.

Trust was drafted by Attorney. Pursuant to the terms of Trust, Trustee 1, a certified public accountant, was appointed as the original trustee of Trust. Attorney has represented that at the time of the execution of the trust instrument, Attorney verbally explained the trust provisions to Settlor and Trustee 1 and advised as to the importance of making a timely allocation of Settlor's GST exemption on a United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax return") upon a transfer to Trust. Sometime prior to Date 3, Attorney sent a letter to Trustee 1 advising, in pertinent part, of his responsibility for timely allocating the Settlor's GST exemption on a gift tax return. A copy was sent to Settlor.

Settlor transferred the following amounts to Trust in years 1 through 11 and gave each of her children and grandchildren a right of withdrawal that fell within the annual exclusion amount and that, in total, equaled the amount of the transfer each year.

Year 1	=	\$ <u>a</u>
Year 2	=	\$ <u>b</u>
Year 3	=	\$ <u>c</u>
Year 4	=	\$ <u>d</u>
Year 5	=	\$ <u>e</u>
Year 6	=	\$ <u>f</u>
Year 7	=	\$ <u>g</u>
Year 8	=	\$ <u>h</u>
Year 9	=	\$ <u>i</u>
Year 10	=	\$ <u>j</u>
Year 11	=	\$ <u>k</u>

In Years 1 through 4, on timely-filed gift tax returns, Trustee 1 made allocations of Settlor's available GST exemption, but failed to allocate Settlor's available GST exemption to the entire transfer each year. The allocations made were as follows:

Year 1	=	\$ <u>aa</u>
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PLR-148071-02

Year 2	=	\$ <u>bb</u>
Year 3	=	\$ <u>cc</u>
Year 4	=	\$ <u>dd</u>

In Year 5, Trustee 1 retired and Trustee 2, an accountant employed by the same firm as Trustee 1, became the trustee pursuant to the terms of Trust. It has been represented that due to an oversight, Trustee 2 failed to timely file the gift tax returns and failed to allocate Settlor's available GST exemption to amounts transferred in Years 5 through 7.

Sometime after Year 7, Settlor, pursuant to the terms of Trust, appointed Trustee 3, a tax preparer, to be the trustee of Trust. On Date 4, Attorney sent a letter to Trustee 3, with a copy to Settlor, advising Trustee 3, in pertinent part, of the need to timely allocate the GST exemption to the trust. It has been represented that due to an oversight, Trustee 3 failed to timely file the gift tax returns and failed to allocate Settlor's available GST exemption to amounts transferred in Years 8 through 10.

After the death of Settlor in Year 11, Attorney discovered that the appropriate GST allocations had not been timely made on a gift tax return in the previous years. Attorney hired a certified public accountant to prepare and timely file a gift tax return with the appropriate allocations of GST exemption for Year 11 and to make a protective allocation of GST exemption for the amounts transferred in Years 1 through 10.

It has been represented that Settlor relied upon the accountants acting as trustees of Trust to prepare and timely file gift tax returns and to make timely allocations of GST exemption.

Subsequent to the death of Settlor and pursuant to the terms of Trust, each child of Settlor elected to act as sole trustee of their respective trusts.

The current trustees have requested an extension of time under § 2642(g) and § 301.9100-3, to allocate Settlor's GST exemption to the transfers to Trust made in Years 1 through 10.

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.

PLR-148071-02

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.

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.

PLR-148071-02

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, trustees are granted an extension of time of sixty (60) days from the date of this letter to make retroactive allocations of Settlor's available GST exemption with respect to Settlor's transfers to Trust in Years 1 through 10. The allocation will be effective as of the dates of the transfers to the trust in Years 1 through 10, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to Trust. The allocations should be made on supplemental gift tax returns filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental gift tax returns. 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(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

PLR-148071-02

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

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

Enclosures

Copy for section 6110 purposes
Copy of this letter