

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B9 - PLR-112708-03

Date:

June 20, 2003

LEGEND:

Grantor	=
Law Firm	=
Date 1	=
Trust	=
Stock	=
\$X	=
Year 1	=
Date 2	=
Date 3	=

Dear :

This is in response to your letter dated February 14, 2003, submitted by your authorized representative, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Grantor's generation-skipping transfer ("GST") tax exemption.

The facts and representations submitted are summarized as follows: Grantor's business partner arranged for Law Firm to create two irrevocable trusts, one for himself, the other for Grantor. On Date 1, Grantor signed Trust, which he funded with Stock valued at \$X.

Article First of Trust provides that the trustees, in their discretion, may make distributions from time to time to one or more members of the beneficial class consisting of Grantor's issue.

Article Second provides that whenever neither Grantor nor the Grantor's spouse is living, or, if earlier, whenever a majority of the trustees determine that maintenance of

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the trust property as a single fund is no longer necessary or desirable, the trustees may divide the remaining trust property, if any, among the issue of Grantor then living, if any, in shares determined by right of representation. The trustees will hold and dispose of the share of each person (the "principal beneficiary") as a separate trust for his benefit.

Article Second, paragraph A provides that during the life of the principal beneficiary, the trustees, as they deem advisable, may make distributions to one or more members of the class consisting of the principal beneficiary and his issue.

Article Second, paragraph B provides that the principal beneficiary may appoint, at his death, part or all of the property then remaining to or for or in trust for any one or more of the Grantor's issue and part of the property not exceeding one-half, to or for or in trust for his spouse. However, no property may be appointed to the principal beneficiary, his estate, his creditors, or creditors of his estate. This power of appointment may be exercised only by a will that explicitly refers to such power and expressly exercises it; and any trust property not effectively appointed by the principal beneficiary is to be held and disposed as provided in paragraph C.

Article Second, paragraph C provides that except as provided in paragraph B, above, if the principal beneficiary dies while any property is still held in his trust, then the trustee is to divide any remaining property among the principal beneficiary's then living issue, if any, and if none, among the then living issue of the principal beneficiary's nearest ancestor who is a descendant of Grantor and who has issue then living, and if none, among Grantor's then living issue, if any, in shares determined by right of representation.

In Year 1 Grantor engaged Law Firm to assist with his estate planning. Law Firm subsequently discovered that no gift tax return had been filed for the Date 1 transfer. Law Firm then requested that Grantor's accountant prepare gift tax returns reporting Grantor's transfer to Trust for Grantor and his spouse, who had decided to split the gift for gift tax purposes. Because of a substantial growth in the assets of Trust since the initial funding, a late allocation of GST exemption was not made. The gift tax returns for the Date 1 transfer were filed on Date 2.

After Grantor's death on Date 3, his spouse, who is also the executor of his estate, engaged Law Firm to assist her with the administration of Grantor's estate. Over the course of the estate administration, Law Firm advised Grantor's spouse of the ability to seek an extension of time to allocate Grantor's GST exemption to the Date 1 transfer to Trust.

Grantor's estate has requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Grantor's GST exemption to the Date 1 transfer to Trust, using the asset values as of the date of the transfer.

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 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 § 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 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

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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, Grantor's estate is granted an extension of time of 60 days from the date of this letter to make an allocation of Grantor's available GST tax exemption with respect to the Date 1 transfer to Trust. The allocation will be effective as of Date 1, the date of the transfer to Trust, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated to Trust.

The allocation should be made on supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return 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.

The ruling contained in this letter is 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 Trust.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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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.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter