

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04-PLR-118058-02
Date:

JUNE 11, 2002

Re:

LEGEND:

Taxpayer =
Date 1 =
Date 2 =
Date 3 =
Corporation =
Trust =

Trustee =
Daughter 1 =
Daughter 2 =
Daughter 3 =
Daughter 4 =
\$X =

Dear :

This letter is in response to your letter of March 13, 2002, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make a timely Generation-Skipping Transfer (GST) tax exemption allocation pursuant to section 2642 of the Internal Revenue Code.

FACTS:

According to the information submitted, on Date 1, Taxpayer created Trust, an irrevocable trust. Article III, Paragraph B of the Trust instrument provides that until the time of the division of the trust (as defined in Article III, Paragraph A) the Trustee is to pay all or any portion of the net income or principal of the trust estate to any one or more of Taxpayer's children and their issue as the Trustee may deem advisable for the health, maintenance, support or education of any of them.

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Article III, Paragraph A provides that the "time of division" of the trust shall be when no living child of Taxpayer's is under age twenty-two (22)."

Article III, Paragraph C provides that at the time of division of the trust, the Trustee is to divide the trust estate into equal shares for each of Taxpayer's children then living, and one share collectively for the issue then living of a deceased child. Each share is to be held in further trust for the benefit of the child and his or her issue.

Trustee was designated as trustee. On Date 2, Taxpayer transferred shares of the common stock of Corporation to Trust. At the time that Taxpayer made the gift, Taxpayer's only issue were Daughter 1, Daughter 2, Daughter 3 and Daughter 4.

On Date 3, Taxpayer timely filed a federal gift tax return Form 709 reporting the transfer to Trust and valuing the stock at \$X. However, on the return, Taxpayer failed to make an allocation of GST tax exemption with respect to the transfer. Taxpayer represents that no distributions have been made from Trust, and no GST tax return has ever been due with respect to Trust or any Trust property.

LAW AND ANALYSIS:

Section 2601 imposes a tax on every generation-skipping transfer made by a "transferor" to a "skip person."

Under section 2602, the amount of the tax imposed under section 2601 is equal to the taxable amount multiplied by the applicable rate. The applicable rate is defined in section 2641 as the maximum federal estate tax rate multiplied by the inclusion ratio with respect to the transfer. Under section 2642(a), in general, the inclusion ratio with respect to any property subject to a generation-skipping transfer is the excess of one over the applicable fraction determined for the trust from which the transfer is made. The applicable fraction with respect to a trust is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust, and the denominator of which is the value of the trust property, with certain specified adjustments.

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 as provided in section 2631(c)) 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 section 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.

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Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe the circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) and (2). The regulations shall include procedures for requesting comparable relief for transfers made before the date of the enactment of section 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under section 2642(g), 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, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

In Notice 2001-50, 2001-34 I.R.B. 189, the Service announced that taxpayers may seek an extension of time to make a GST tax allocation pursuant to section 2642(g)(1), under the provisions of section 301.9100-3.

Under section 301.9100-1(c) of the Procedure and Administration Regulations 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 301.9100-3(a) provides that relief will be granted when the taxpayer provides evidence to establish 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) of the regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith: (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) 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.

In this case, we conclude that the requirements of section 301.9100-1 and section 301.9100-3 have been met. Accordingly, an extension of time is granted to make an allocation of GST tax exemption to the Trust with regard to the Date 2 transfer. The allocation must be made within 60 days from the date of this letter. The allocation should be made on a supplemental Form 709, United States Gift (and Generation-skipping Transfer) Tax Return and filed with the Internal Revenue Service Center,

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Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. 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 your 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,

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy for §6110 purposes
Copy of this letter