**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4\PLR-162229-02
Date:
MARCH 03, 2003

Re:


Legend:

Trust          =

Decedent       =
Sister         =
CPA Firm       =
B              =
C              =
D              =
E              =
F              =
G              =
H              =
Date 1         =
Date2          =
Date 3         =
Date 4         =
State          =

Dear                ,

        This is in response to your October 2, 2002, submission in which you requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate Decedent's remaining GST exemption to an irrevocable trust, Trust, created by Decedent.

        According to the facts submitted, on Date 1, Decedent created Trust for the benefit of Decedent's sister, Sister, and Sister's lineal descendants. Decedent funded Trust on Date 2 by transferring marketable securities to Trust.

        The pertinent provisions of Trust provide as follows:

        Article II(a) of Trust provides that until the death of Sister, the trustee is to pay to Sister all of the net income of Trust, which is to be paid from time to time in the trustee's discretion but no less frequently than annually. In addition, the trustee is to pay to Sister so much of the principal of Trust as may be determined by the trustee from time to time, in the trustee's sole discretion, for the health, maintenance and support of Sister in her accustomed standard of living. If Decedent survives Sister, then upon the death of Sister and until the death of Decedent, the trustee is to accumulate the remaining income and principal in Trust or may, at any time and from time to time, in the trustee's sole and absolute discretion, distribute all or any part of the income and principal of the trust to any or all of B, C, D, E, F, G, and H, and any other living lineal descendants of Sister, for the health, education, (including college and professional education), maintenance and support of such beneficiary, to enable the beneficiary to enter into a trade, business, or profession, to purchase a home, to marry, or for any other purposes the trustee deems to be in the best interest of such beneficiary.

        Under Article II(c), upon the death of the survivor of Decedent and Sister, any remaining income and principal of Trust is to be distributed to the then surviving lineal descendants of Sister, either outright or in trust, to the extent that Sister shall appoint by specific reference to the power in Sister's will. If there are no surviving lineal descendants of Sister, then the corpus is to pass to Decedent's heirs equally, per stirpes. To the extent that Sister does not exercise this special power of appointment, the remaining income and principal of Trust as then constituted is to be divided into as many equal shares as there are children of Sister then living and children of Sister then deceased with issue then living. Subject to Article III, shares representing living children of Sister are to be distributed outright to such children and shares representing children of Sister then deceased with issue then living are to be distributed outright to the issue of such children equally per stirpes.

        On Date 3, Decedent filed a federal gift tax return (Form 709), prepared by Decedent's accountant, CPA Firm, with respect to her Date 2 transfer to Trust. No tax was due. CPA Firm, however, inadvertently failed to allocate any of Decedent's

Generation-Skipping Transfer (GST) exemption to Trust on Decedent's gift tax return. Decedent died on Date 4. No GST exemption was allocated on the Decedent's estate tax return. On a gift tax return filed before the Date 3 gift tax return, reporting a transfer made prior to Date 2, a small portion of Decedent's GST exemption was allocated to four direct skips.

At the present time, Sister is living. All of Sister's children are also living and no taxable distributions have been made from Trust.

The executor of Decedent's estate requests an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's remaining GST exemption under § 2642(b)(1) to Trust. Executor requests that such allocation is to be made based on the federal gift tax value of the property transferred to Trust as of Date 2.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer (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 the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 26.2632-1(d)(1) provides that the executor may allocate GST exemption with respect to a lifetime transfer by a decedent of property that is not included in the transferor's gross estate on a Form 709.

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)).

Section 2642(g)(1)(A) provides 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.

Under § 301.9100-1(c), 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. Notice 2001-50, 2001-34 I.R.B. 189, 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.

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 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. The executor of Decedent's estate is granted an extension of time until 60 days after the date of this letter to allocate Decedent's remaining available GST exemption to Decedent's Date 2 transfer to Trust. The allocation will be effective as of 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 the trust.

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.

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.  The allocations of GST exemption for Decedent should be made on a supplemental Form 709.  The supplemental Form 709 is to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.  A copy of this letter should be attached to the supplemental Form 709.  A copy is enclosed for this purpose.

Sincerely,


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

Enclosures
        Copy for section 6110 purposes
        Copy of this letter




    cc:



    cc: