

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-156775-04

Date: JULY 13, 2005

Re:

Legend:

Date 1	=
Date 2	=
Date 3	=
Date 4	=
Decedent	=
Spouse	=
Son	=
Accountant	=
Attorney	=
Trust	=

Dear :

This is in response to your letter dated October 25, 2004 requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: Decedent created a revocable living trust (Trust) on Date 1. Decedent died on Date 2 survived by Spouse and Son. At his death most of Decedent's property was held in Trust. Decedent's will provided for his residuary estate to be added to Trust. The Trust Agreement provides for the property held in Trust at the time of Decedent's death to be divided among three trusts to benefit Spouse during her life and then to Son and his

descendants. Son is trustee of the trust and the successor personal representative of Decedent's estate.

Decedent's Accountant was retained by Decedent's estate to prepare the Form 706 (United States Estate and Generation-Skipping Transfer) Tax Return. The return was timely filed on Date 4. In preparing the return, Accountant neglected to complete Schedule R and allocate Decedent's GST exemption to Trust. Following Spouse's death, Attorney made a review of documents relating to Decedent's estate. Attorney discovered that no Schedule R had been filed.

Son requests an extension of time under § 2642(g)(1) and § 301.9100-3 to allocate Decedent's GST exemption to Trust in accordance with the trust agreement and that the allocation will be effective as of the date of Decedent's death. Son further requests a ruling that Son may make the allocation in his capacity as successor trustee of Trust and/or designated successor personal representative under Decedent's will.

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 GST tax, every individual shall be allowed a GST exemption 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) 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)(2)(A) provides that if property is transferred as a result of the death of the transferor, the value of such property shall be its value as finally determined for purposes of chapter 12.

Section 2642(b)(2)(B) provides that any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

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). 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. See Notice 2001-50, 2001-2 C.B. 189.

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).

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, Son may make the election and is granted an extension of time of 60 days from the date of this letter to allocate Decedent's exemption to Trust in accordance with the trust agreement. The allocation will be effective as of the date of Decedent's death.

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 taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocation of Decedent's exemption should be made on a supplemental Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. 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: