

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200418021**

Release Date: 04/30/2004

Index Number: 2642.00-00, 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09 / PLR-144321-03

Date:

January 14, 2004

Legend:

Taxpayer =

Trust =

Date 1 =

Year 1 =

Wife =

Son =

Partnership =

z =

Dear Sir:

This is in response to your letter dated July 10, 2003, and subsequent correspondence requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Taxpayer's generation-skipping transfer (GST) exemption to a transfer to a trust.

The facts and representations submitted are summarized as follows: Taxpayer created Trust on Date 1. Trust is an irrevocable trust created for the benefit of Taxpayer's Wife, Son, grandchildren, and more remote issue.

Article First of the trust agreement provides that the trustee shall pay or apply to or for the use of one or more of Wife, Son, grandchildren, or more remote issue of Taxpayer from time to time living, so much or all of the net income and/or principal of the Trust, in amounts or proportions as the trustee in her sole and unreviewable

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discretion shall select and determine, and shall accumulate and add to principal any income not so paid or applied.

In Year 1, Taxpayer transferred a partnership interest in Partnership to Trust. Taxpayer represents that there have been no other transfers to Trust since the Year 1 transfer.

Taxpayer reported the value of the transferred partnership interest as \$z on his Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1. Taxpayer relied upon a certified public accounting firm to prepare the gift tax return. The firm did not advise Taxpayer that his GST tax exemption must be affirmatively allocated to the transfer to exempt distributions from Trust from the generation-skipping transfer tax, and the allocation was not made on the return.

Taxpayer has requested an extension of time to make the allocation of his GST tax exemption with respect to the transfer to Trust in Year 1.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

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)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transfer. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST tax 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 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST tax exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

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As applicable to transfers made in Year 1, § 2642(b)(1) provides in relevant part that if the allocation of the GST tax exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) [deemed allocations to certain lifetime direct skips] –

(A) the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and

(B) such allocation shall be effective on and after the date of such transfer.

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 tax exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), 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, the time for making the allocation 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 tax exemption to lifetime transfers and transfers at death, the time for electing out the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer 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 six 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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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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, Taxpayer is granted an extension of time of 60 days from the date of this letter to file a supplemental Form 709 with a notice of allocation for Year 1. The allocation will be effective as of the date of the transfer in Year 1 and will be based on the value of the property transferred to the Trust on that date. The supplemental Form 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the form, and a copy is attached for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax or state law consequences of any aspect of any transaction involving 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.

Pursuant to the Power of Attorney on file, a copy of this letter is being sent to your attorney.

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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.

Sincerely,

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

Enclosures

Copy of this letter for § 6110 purposes

Copy of this letter