

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09 – PLR-112897-04

Date:

April 13, 2004

Legend:

Trust =

Taxpayer =

Recipient =

Charity =

Attorney =

Bank =

Date 1 =

Date 2 =

Date 3 =

A =

Dear :

This is in response to your letter dated February 19, 2004 in which you requested an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Taxpayer's generation-skipping transfer (GST) tax exemption to a transfer made to a charitable remainder trust.

A summary of the facts submitted and the representations made are as follows. On Date 1, Taxpayer formed a charitable remainder annuity trust (Trust) to benefit Charity and Recipient, a person who is represented to be more than 37 ½ years younger than Taxpayer. Taxpayer appointed Bank as trustee of Trust.

Paragraph 2 of Trust provides that Recipient is to receive annuity payments equal to 5 percent of the net fair market value of Trust's initial assets during her lifetime. The annuity amount is to be paid first from income and then from principal. Income not distributed in a year is to be added to principal. Paragraph 4 provides that upon Recipient's death, Trust's assets are to be distributed to Charity.

On Date 2, Taxpayer funded Trust with assets Taxpayer valued at \$ A. Taxpayer retained Attorney to prepare the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the gift to Trust.

Due to a miscommunication between Attorney and Bank, Taxpayer failed to allocate her GST exemption to Trust on a Schedule R attached to the Form 709. This failure was discovered after Taxpayer's death on Date 3 by the attorney who prepared the estate tax return for Taxpayer's estate.

The estate is requesting an extension of time under §§ 2642(g) and 301.9100-3 to allocate Taxpayer's GST exemption to Recipient's lifetime interest in the Date 2 transfer to Trust and that such allocation will be based on the value of Recipient's lifetime interest on Date 2.

Law and Analysis:

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 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 2613(a) provides that a "skip person" is (1) a natural person assigned to a generation which is two or more generations below the assignment of the transferor, or (2) a trust if either (a) all interests in the trust are held by skip persons or (b) there is no person holding an interest in the trust and at no time after the transfer may distributions be made from the trust to a non-skip person. Section 2613(b) provides that the term non-skip person means any person who is not a skip person.

Section 26.2612-(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that a skip person is an individual assigned to a generation more than one generation below that of the transferor (determined under the rules of § 2651).

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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

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 2632-1(b)(2) 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 2642(a)(1)(A) provides that the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over the applicable fraction determined for the trust from which such transfer is made.

Section 2642(a)(2) provides, in pertinent part, that for purposes of § 2642(a)(1), the applicable fraction is a fraction-- (A) the numerator of which is the amount of the GST exemption allocated to the trust, and (B) the denominator of which is-- (i) the value of the property transferred to the trust, reduced by (ii) the sum of-- (I) any federal estate tax or state death tax actually recovered from the trust attributable to such property, and (II) any charitable deduction allocated under § 2055 or § 2522 with respect to such property.

As applicable during the year at issue, § 2642(b)(1) provided, in relevant part, that if the allocation of the GST 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 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). 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. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2651(d) provides that an individual who is not assigned to a generation by reason of § 2651(b) and (c) shall be assigned to a generation on the basis of the date of such individual's birth with-- (1) an individual born not more than 12½ years after the date of the birth of the transferor assigned to the transferor's generation, (2) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and (3) similar rules for a new generation every 25 years.

Under section 2651(f)(3), any organization described in § 511(a)(2), any charitable trust described in § 511(b)(2), and any governmental entity, is assigned to the transferor's generation.

Section 2652(c)(1)(A) provides that a person has an interest in property held in trust if (at the time the determination is made) such person has a right (other than a future right) to receive income or corpus from the trust.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2624(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 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 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 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) 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, the estate is granted an extension of time of sixty (60) days from the date of this letter to allocate Taxpayer's GST exemption to Trust. The allocation will be effective as of Date 2, and will be based on the value of the property transferred to Trust on Date 2. The allocation should be made on a supplemental Form 709 and 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.

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 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. Specifically, no opinion is expressed or implied regarding the value of the property Taxpayer transferred to Trust or the value of Recipient's lifetime interest in the property for federal transfer tax purposes.

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.

Sincerely,

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

Enclosure: Copy for § 6110 purposes
Copy of this letter