

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-107396-06

Date:
September 22, 2006

Taxpayer =
Insurance Trust =

Date 1 =
Education Trust =
Son's Trust =

Daughter's Trust =
Irrevocable Trust =

Dear :

This responds to your representative's letter dated January 30, 2006, 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 elections under § 2632(c)(5) and to make allocations of your generation-skipping transfer (GST) tax exemption.

FACTS

The information submitted states that on Date 1, Taxpayer created the Insurance Trust. Taxpayer made transfers to the Insurance Trust in through . Under the terms of the Insurance Trust, there is a possibility that a GST may occur and it is considered a "GST trust" within the meaning of § 2632(c)(3)(B). Taxpayer did not intend to allocate any GST exemption to the transfers to the Insurance Trust.

Taxpayer's tax advisor prepared Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for and , reporting the transfers to the Insurance Trust and making no affirmative allocation of Taxpayer's GST exemption to the transfers. However, in preparing the Form 709 for , Taxpayer's tax advisor inadvertently failed to elect under § 2632(c)(5) to have the automatic allocation rules in

§ 2632(c) not apply to the transfer to the Insurance Trust. In addition, Taxpayer's tax advisor inadvertently failed to prepare and advise Taxpayer to file Forms 709 for through , so the election under § 2632(c)(5) was not made with respect to the transfers made in those years.

With respect to the Insurance Trust, Taxpayer now requests an extension of time under § 2642(g)(1) and § 301.9100-3 to make elections under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to the transfers to the Insurance Trust in through .

In addition, Taxpayer created four separate irrevocable trusts in , namely, the Education Trust, the Irrevocable Trust, the Son's Trust, and the Daughter's Trust. Taxpayer made transfers to each of the trusts in through . Under the provisions of the Education Trust and the Irrevocable Trust, there is a possibility that a GST may occur and both are considered "GST trusts" within the meaning of § 2632(c)(3)(B). Under the provisions of the Son's Trust and the Daughter's Trust, there is a possibility that a GST may occur; however, the trusts do not meet the definition of a "GST trust" within the meaning of § 2632(c)(3)(B). Taxpayer intended to allocate GST exemption to the transfers to the Education Trust, the Son's Trust, and the Daughter's Trust. Taxpayer did not intend to allocate GST exemption to the transfers to the Irrevocable Trust.

Taxpayer's tax advisor inadvertently failed to prepare and advise Taxpayer to file Forms 709 for through in order (i) to elect under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply with respect to the transfers to the Irrevocable Trust made in those years, and (ii) to allocate Taxpayer's GST exemption to the transfers made to the Son's Trust and the Daughter's Trust in those years. Because Education Trust was a "GST trust" within the meaning of § 2632(c)(3)(B), GST exemption was automatically allocated to the transfers made to this trust in through .

With respect to the Irrevocable Trust, the Son's Trust and the Daughter's Trust, Taxpayer now requests an extension of time under §§ 2642(g)(1) and 301.9100-3 to (i) make elections under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to the transfers to the Irrevocable Trust in , , and , and (ii) make allocations of Taxpayer's GST exemption to the transfers to the Son's Trust and the Daughter's Trust in , , and . Taxpayer requests that such allocations will be based on the value of the property transferred to the Son's Trust and the Daughter's Trust on each date of transfer.

LAW & ANALYSIS

Section 2601 imposes a tax on every 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 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 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(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000. See P.L. 107-16, § 561(a). Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term indirect skip means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 to a GST trust.

Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons (I) before the date that the individual attains age 46, (II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or (III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46.

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have § 2632(c)(1) not apply to an indirect skip. Such an election shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

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 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.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(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 GST 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 in 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.

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 election 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 to advise the taxpayer to make, the election.

We conclude, based on the facts submitted and the representations made, 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 make an election under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply with respect to Taxpayer's transfers to the Insurance Trust in through and to the Irrevocable Trust in through . For the transfer to the Insurance Trust in , the election under § 2632(c)(5) should be made on a Supplemental Form 709 and for the transfers to the Insurance Trust and the Irrevocable Trust in through , the elections should be made on original Forms 709. In addition, Taxpayer is granted an extension of time of 60 days from the date of this letter to allocate GST exemption to the transfers to the Son's Trust and the Daughter's Trust in through . The allocation of Taxpayer's GST exemption will be effective as of the date of the transfers, and the value of the transfers for gift tax purposes will be used in determining the amount of GST exemption to be allocated. The allocations of GST exemption to the transfers to the Son's Trust and the Daughter's Trust in through also should be made on Forms 709. Each Form 709, with any elections made under § 2632(c)(5) and any GST exemption allocated, should be filed with the Cincinnati Service Center at Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. Copies of this letter should be attached to each Form 709.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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,

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

Enclosure (0)