

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-157102-04

Date:

March 30, 2005

## LEGEND

Grantor =

Trust =

Date 1 =

Year 4 =

Dear :

This responds to your representative's letter dated October 13, 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 election under § 2632(c)(5).

## FACTS

The information submitted states that on Date 1, Grantor created Trust and retained an interest for a term of four years. Grantor survived the term. Under the terms of Trust, upon the death of Grantor, there is a possibility that a generation-skipping transfer (GST) may occur. The estate tax inclusion period with respect to Grantor's transfer to Trust closed for GST tax purposes in Year 4, the year during which Grantor's retained interest expired. On his Form 709 for Year 4, Grantor did not make an election under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to the transfer because Grantor's counsel advised him that Trust was not a "GST trust" as defined in § 2632(c)(3)(B) and, thus, the automatic allocation rules contained in § 2632(c)(1) did not apply to Trust.

Grantor is now advised by his counsel that Trust is a "GST trust" as defined in § 2632(c)(3)(B) and, accordingly, requests an extension of time to make an election under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to the transfer.

## LAW AND 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 tax 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 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 will be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. The term "indirect skip" means any transfer of property (other than a direct skip) subject to gift tax that is made to a GST trust. Section 2632(c)(3)(A). With certain exceptions, a GST trust is a trust that could have a GST with respect to the transferor. Section 2632(c)(3)(B).

Section 2632(c)(4) provides that for purposes of § 2632(c), an indirect skip shall be deemed to have been made only at the close of the estate tax inclusion period (ETIP). The fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 26.2632-1(c)(3)(ii) provides that an ETIP terminates at the time at which no portion of the property is includible in the transferor's gross estate.

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 tax 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 tax 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor is granted an extension of time of 60 days from the date of this letter for making the election under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply

with respect to Grantor's transfer to Trust. The election should be made by:  
(1) completing a statement that identifies the trust, describes the transfer, and provides that the transferor is electing, pursuant to § 2632(c)(5)(A), to have the automatic allocation rules contained in § 2632(c)(1) not apply to the described transfer to the trust; and (2) submitting the statement, a copy of Grantor's Year 4 Form 709, and a copy of this letter to the Cincinnati Service Center at Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999.

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.

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.

Sincerely,

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

cc: