

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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

Refer Reply To:
CC:PSI:04
PLR-104724-10
Date:
May 10, 2010

RE:

Legend

Decedent =
Spouse =
Trust A =

Trust B =

Daughter 1 =
Daughter 2 =
Date 1 =
x =
Bank =
Date 2 =
Date 3 =
Accountant =
Date 4 =

Dear :

This responds to your letter dated January 25, 2010, by your authorized representatives requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's and Spouse's generation-skipping transfer (GST) exemption to the transfers made to Trust A and Trust B.

On Date 1, prior to December 31, 2000, Decedent created an irrevocable trust, Trust A, for the benefit of Daughter 1 and her issue and funded it with x shares of Bank. Trust A has GST potential. On the same date, Spouse created an irrevocable trust, Trust B, for the benefit of Daughter 2 and her issue and funded it with x shares of Bank. Trust B

has GST potential. Both Daughter 1 and Daughter 2 have children, currently living.

Decedent and Spouse retained Accountant to prepare their respective Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Decedent and Spouse each timely filed their respective Forms 709 and elected under § 2513 to treat Decedent's and Spouse's transfers as made one-half by each spouse. Accountant reported the value of the transfers on Decedent's and Spouse's Forms 709 and did not allocate Decedent's and Spouse's available GST exemptions to the transfers to Trust A and Trust B. Accountant died on Date 2.

Decedent died on Date 3. Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is due, with extension on Date 4. In preparing for the filing of Form 706, Accountant's failure to allocate Decedent's and Spouse's GST exemptions to the Date 1 transfers to Trust A and Trust B was discovered.

It is represented that to date no taxable distributions, taxable terminations, or any other GST taxable events have occurred with respect to either Trust A or Trust B that would result in a GST tax liability on the part of any of Trust A, Trust B, or the beneficiaries of each trust. It is further represented that no addition, either actual or constructive, have been made to Trust A or Trust B since Date 1. At the time of the transfers to Trust A and Trust B, Decedent and Spouse had their full GST exemption available for allocation to the Date 1 transfers. Decedent and Spouse have not yet allocated any part of their respective GST exemption to any other gifts.

LAW AND ANALYSIS

Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a "skip person." 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 GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means, with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in § 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to

property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect for the tax year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Sections 2652(a)(2) and 26.2652-1(a)(4) provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer the value of such property for purposes of determining the inclusion ratio under § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

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), 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 § 2642(g)(1), 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 (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 generation-skipping 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 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). 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.

Under § 301.9100-3(b)(1)(v), 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 representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent and Spouse are granted an extension of time of 60 days from the date of this letter to allocate Decedent's and Spouse's available GST exemption with respect to the Date 1 transfers to Trust A and Trust B. The allocations will be effective as of the date of the transfers to the trusts, and the gift tax values of the transfers to the trusts will be used in determining the inclusion ratio with respect to each trust.

The allocations should be made on Supplemental Forms 709 for the appropriate calendar year and filed with the Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Supplemental Form 709.

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. The ruling(s) in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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.

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.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes
Copy of this letter

cc: