

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-146635-09

Date: MARCH 26, 2010

RE:

Legend

Decedent	=
Trust 1	=
Trust 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Daughter	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Grandchild 4	=
Attorney	=

Dear :

This responds to your letter dated October 13, 2009, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file a qualified physician's certification with respect to the decedent's incompetency as required by § 26.2601-1(b)(3) of the Generation-Skipping Transfer Tax Regulations.

The facts submitted and representations made are summarized as follows:

Decedent created Trust 1 on Date 1. Trust 1 was revocable during the lifetime of Decedent. Trust 1 provides, in relevant part, that all income is to be paid to Daughter for her lifetime. Upon Daughter's death, the assets are to be held in trust for the benefit of Daughter's children, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4, until

they reach the age of 35. When each grandchild reaches the age of 35, each grandchild is to receive his share of the principal of Trust 1. Trust 1 has never been amended or modified.

On Date 2, Decedent executed her will which devised her entire residuary estate to Trust 2. Trust 2 provides, in relevant part, that all income is to be paid to Daughter. Upon Daughter's death, the assets of Trust 2 are to be distributed to the issue of Decedent. Decedent's surviving issue are Grandchildren 1 – 4.

Decedent died on Date 3. Upon her death, Trust 1 was included in her gross estate. No additions were made to Trust 1 from October 22, 1986 to Date 3. Decedent's executor hired Attorney to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. The Form 706 was timely filed on Date 4. No physician's certificate or other evidence of Decedent's mental incompetency were attached to the Form 706.

It is represented that Decedent was incompetent at all times on and after October 22, 1986, and did not regain competency to modify or revoke the terms of her will or Trust 1 before her death.

The executor of Decedent's estate has requested an extension of time under § 301.9100-3 to file one or more qualified physician's certifications and other evidence as required by § 26.2601-1(b)(3) stating that Decedent was under a mental disability on October 22, 1986, and at all times thereafter until her death.

Section 2601 of the Internal Revenue Code 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.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i), if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or care of the decedent's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706 either - (1) a

certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). 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 met. Consequently, we grant an extension of time of 60 days from the date of this letter for filing the required physician's certification. The physician's certification should be attached to a supplemental Form 706 for Decedent. The Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should also be attached to the supplemental Form 706. A copy of this letter is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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, we express no opinion as to whether Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

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.

The rulings 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) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs and Special Industries

By:

Leslie H. Finlow
Acting Senior Technician Reviewer
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy for § 6110 purposes
Copy of this letter