

Internal Revenue Service

Department of the Treasury
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Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-151149-11
Date:
May 02, 2012

In Re:

Legend:

Decedent	=
Spouse	=
Trust	=
Year 1	=
Year 2	=
Date 1	=

Dear :

This responds to your personal representative's letter of December 8, 2011, requesting an extension of time pursuant to section 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to a trust.

The facts submitted and the representations made are as follows. On Date 1 (in Year 1), Decedent created Trust, an irrevocable trust, with GST tax potential. On the same date, Decedent transferred stock to Trust. Date 1 is prior to December 31, 2000.

Decedent and Spouse hired a tax professional to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On these tax returns Decedent and Spouse elected under § 2513 to treat all gifts made in Year 1 as made one-half by each of them. The tax professional inadvertently failed to allocate Decedent's and Spouse's GST exemption to the transfer to Trust on their respective Form 709.

Decedent died in Year 2. In the course of dealing with Decedent's estate, the executors of his estate discovered the failure to allocate GST exemption to Trust. It has been represented that no other gifts were made to Trust and that there have been no taxable terminations of or taxable distributions from Trust. It has also been represented

that Decedent and Spouse have sufficient GST exemption available to allocate to their portion of the transfer to Trust in Year 1.

The executors of Decedent's estate and Spouse are requesting an extension of time to allocate Decedent's and Spouse's GST exemption to their respective portion of the transfer to Trust in Year 1. They are also requesting that the allocations be effective as of the date of the transfer and be based on the fair market value for federal estate tax purposes of the transfer on the date the transfer was made.

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. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides, for the year at issue, that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation) 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 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, 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. See Notice 2001-50, 2001-2 C.B. 189.

Section 2652(a)(2) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations 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 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). 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.

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 executors of Decedent's estate and Spouse are granted an extension of time of 120 days from the date of this letter to allocate Decedent's and Spouse's available GST exemption to their respective portion of the Year 1 transfer to Trust. The allocations will be effective as of the date of the transfer and will be based on the fair market value for federal estate tax purposes of the transfer on the date the transfer was made.

The executors of Decedent's estate and Spouse should make the allocations on supplemental Forms 709 for Year 1. The executors and Spouse should file the supplemental Forms 709 with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 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.

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.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner

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

cc: