

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09 – PLR-155361-03

Date:

November 05, 2003

LEGEND:

Decedent =

Date 1 =

Date 2 =

Trust =

State =

Year 1 =

x =

Return Preparer =

Dear

This is in response to your letter dated September 10, 2003, on behalf of Decedent's estate, 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 allocations of Decedent's Generation-Skipping Transfer (GST) exemption.

PLR-155361-03

The facts and representations submitted are summarized as follows: On Date 1, Decedent established the Trust, an irrevocable trust for the benefit of certain nieces and nephews and their descendants.

Section 3.1 of the Trust provides that the Trust is irrevocable, and that the settler waives all right, power or privilege to alter or amend the Trust, in part or in whole, or to revoke or terminate the Trust or any trust created thereunder.

Section 4.2 of the Trust provides that, during the lifetime of Decedent, the trustee is authorized to make discretionary distributions from the Trust as necessary for the beneficiaries' health, education, support and maintenance.

Section 5.1 provides that, after the Decedent's death, the Trust is to be divided into as many equal shares as there are certain nieces and nephews of the Decedent then living, and nieces and nephews then deceased leaving issue then living. Each share created for a living niece or nephew shall be distributed outright to that niece or nephew. The Trust further provides that, if a certain nephew of Decedent is then living and has issue then living, that nephew will be treated as having predeceased the settler, and his share of the Trust will instead be allocated to his issue.

Section 5.1 further provides that each share created for a deceased niece or nephew shall be allocated to the then-living issue of that deceased niece or nephew in the manner provided by State probate Code. If an individual issue of a deceased niece or nephew has reached 35 years of age at the death of the Decedent, the trustee shall distribute that issue's share outright to that issue. If an individual issue has not reached the age of 35 years at the Decedent's death, the trustee shall continue to hold, administer, and distribute that issue's share in a separate trust for that issue according to the terms set forth in Section 5.2 of the Trust.

In Year 1, the Decedent made cash gifts to the Trust totaling \$x. No other gifts were made to the Trust in Year 1 or in any other year. Decedent's Form 709 for the Year 1 transfer was prepared by Return Preparer. The Year 1 Form 709 reported the gifts to the Trust but through inadvertence no part of the Decedent's GST exemption was allocated to the gifts made to the Trust.

The Decedent died on Date 2. In the course of preparing the Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and administering the Decedent's estate, it was discovered that no part of the Decedent's GST exemption was allocated to the gifts to the Trust on the Decedent's Year 1 Form 709.

The representative of Decedent's estate has requested the following rulings:

PLR-155361-03

(1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make an allocation of Decedent's GST exemption with respect to the Year 1 transfers to the Trust; (2) that the allocations will be effective as of the respective dates of the transfers; and (3) that the allocations shall be made based on the value of the property transferred to the Trust as of the respective dates of the original transfers.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST 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 tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) 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)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

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 § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

PLR-155361-03

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 § 2642(g)(1), which was enacted into law on June 7, 2001.

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, 2001-34 I.R.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). 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 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.

PLR-155361-03

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, Decedent's estate is granted an extension of time of 60 days from the date of this letter to make allocations of Decedent's available GST exemption, with respect to the Year 1 transfers to the Trust. The allocations will be effective as of the dates of the transfers to the Trust, and the gift tax values of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust.

These allocations should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. Copies are enclosed for this purpose.

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 specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the representative of Decedent's estate.

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,

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