

Internal Revenue Service

Department of the Treasury
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Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-122196-07
Date:
April 08, 2008

Legend

Grantor =
Spouse =
Child A =
Child B =
Child C =
Trust 1 =
Trust 2 =
Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Corporation =
Trustees =
Accountant =
Attorney =
Date 1 =
Date 2 =

Year 1 =
Year 2 =

Dear :

This is in response to a letter from your authorized representative dated May 10, 2007, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

Facts

The facts and representations submitted are summarized as follow: Grantor executed two irrevocable trust instruments (Trust 1 and Trust 2) on Date 1, in Year 1. Each Trust instrument created one trust for the benefit of her three children Child A, Child B, and Child C, and their descendants for a total of six trusts: Trust 1A, Trust 1B, Trust 1C, Trust 2A, Trust 2B, and Trust 2C. Trust 1 and Trust 2 were funded with shares of stock in Corporation. No additional transfers have been made to Trusts 1 and 2. Both trusts contain basically identical provisions.

Article V provides that Trustees may divide Trust 1 and Trust 2 in equal or unequal shares to create trusts with a zero inclusion ratio.

Attorney drafted the Trust agreement. Accountant prepared the Form 709s, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1. Accountant had a professional relationship with Grantor in previous years and understood that he was to elect gift-splitting and allocate Grantor's and Spouse's GST exemption. Grantor's and Spouse's Year 1 Forms 709 reflect the gift-splitting treatment and a portion of their GST exemptions was allocated to Trust 1A and Trust 2A for the benefit of Child A. However, Accountant did not allocate Grantor's and Spouse's GST exemption to the trusts for the benefit of Child B and Child C.

The error was discovered in Year 2. Grantor and Spouse have divorced. As a result, on Date 2, Trustees severed the trusts for the benefit of Child B and Child C so that one set of trusts contains assets attributable to Grantor's contributions to trusts for the benefit of Child B (Trust 3 and Trust 4) and one set of trusts contains assets attributable to Spouse's contributions to trusts for the benefit of Child C (Trust 5 and Trust 6). It is represented that no taxable distributions or taxable terminations have occurred with respect to these trusts.

Grantor signed an affidavit stating that she was advised by Attorney to gift-split and allocate GST exemption to Trusts 1 and 2. Grantor also stated in the affidavit that she advised Accountant to split the gifts and allocate GST exemption to Trusts 1 and 2 on Grantor's Form 709. Accountant signed an affidavit stating that he signed the Forms 709 and believed the intention of Grantor had been accurately addressed on the forms. A later review by Accountant discovered the omission of that allocation to the Trusts for the benefit of Child B and Child C.

You have requested an extension of time to allow Grantor to allocate GST exemption to the transfers she made to Trusts 3, 4, 5 and 6.

Law and Analysis

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.

Section 2631(a), as in effect for the tax years at issue, provided 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)) 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 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, other than in a direct skip, is made on Form 709.

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 § 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 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 exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) 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.

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.

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 to make an allocation of her available GST exemption, with respect to her transfers to Trusts 3, 4, 5, and 6, for the benefit of Child B and Child C. The allocation will be effective as of the respective date of the transfers to the trusts and the value of the transfers to the trusts as determined for federal gift tax purposes will be used in determining the amount of Grantor's exemption to be allocated to the trusts.

This allocation should be made on a supplemental Form 709 and 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 be attached to the supplemental Form 709.

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.

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,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter