

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-112980-04

Date:

January 19, 2005

Re:

Legend

Decedent =

Spouse =

Trust A =

Child A =

Child B =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Amount 1 =

Amount 2 =

Amount 3 =

Attorney 1 =

Attorney 2 =

State A =

Dear :

This is in response to a letter from your authorized representative dated February 27, 2004, and subsequent correspondence, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Decedent and Spouse (together referred to as Taxpayers) are residents of State A, a community property state. Taxpayers established an irrevocable trust, Trust A, under an agreement dated Date 1 in Year 1 for the benefit of their children and grandchildren. Child A and Child B are the trustees of Trust A.

Under Trust A's terms, upon the death of the first of Taxpayers to die, the Trust A corpus is to be divided into two equal shares, one to be held for the benefit of Child A and his issue and the other for the benefit of Child B and his issue. Pursuant to Article 3 of Trust A, all income for a child's share is to be paid annually to the child for whom it is held. If the Trustees consider the income insufficient, the Trustees may pay principal to the child as the Trustees deem necessary for the health, education, maintenance, and support of the child. Article 3 also grants each child a testamentary special power of appointment over the assets of the respective child's trust that may be exercised in favor of the child's issue, the heirs of either the Decedent or Spouse (other than the child holding the power), and charities of the child's choosing. If a child does not exercise his special power of appointment, then upon the child's death, the trust estate is to be distributed outright to the child's issue, per stirpes.

In Year 1, Spouse transferred cash and assets valued at Amount 1 to Trust A. For the Year 1 calendar year, Attorney 1 prepared and Spouse timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return reporting Spouse's transfer to Trust A. On the Year 1 return, Amount 1 of Spouse's available GST exemption was allocated to Spouse's transfer to Trust A. In Year 2, Spouse transferred Amount 2 to Trust A. For the Year 2 calendar year, Attorney 1 prepared and Spouse timely filed Form 709. On the Year 2 return, Amount 2 of Spouse's available GST exemption was allocated to Trust A. Similarly, in Year 3, Spouse transferred Amount 3 to Trust A, and, for the Year 3 calendar year, Attorney 1 prepared and Spouse timely filed Form 709. On the Year 3 return, Amount 3 of Spouse's available GST exemption was allocated to Trust A.

In Year 4 and Year 5, Spouse again transferred Amount 3 to Trust A. However, for the Year 4 and Year 5 calendar years, both of which ended prior to January 1, 2001, Attorney 1 did not prepare, and Spouse did not file, a Form 709 because Attorney 1 mistakenly believed that § 2651(e) eliminated the possibility that Trust A would be subject to the GST tax.

Decedent died on Date 2, in Year 5. Attorney 1 prepared and timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 5, Attorney 1 contacted Spouse and advised her to seek a private letter ruling to correct certain errors on Decedent's Form 706. Spouse retained Attorney 2 for advice and preparation of a ruling request with respect to Decedent's Form 706. In connection therewith, it was discovered that Spouse should have filed a Form 709 in

Year 4 and Year 5 and allocated GST exemption to Spouse's transfers to Trust A in Year 4 and Year 5.

You have requested an extension of time to file Spouse's Forms 709 for Year 4 and Year 5 and an extension of time to allocate Amount 2 of Spouse's GST exemption to Trust A in connection with Spouse's Year 4 and Year 5 transfers to Trust A. On Date 3, Forms 709 consistent with the granting of the ruling request were filed by Spouse.

### Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B). 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. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a), as in effect at the time of the transfer, 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)) 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)(2) 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.

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 the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust (or involved in the direct skip).

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 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.

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 transfer 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.

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 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Spouse is granted an extension of time until Date 3 to make an allocation of Spouse's available GST tax exemption, with respect to Spouse's transfers to Trust A in Year 4 and Year 5. The allocations will be effective as of the date of transfer and should be made based on the value of the property transferred to Trust A as of the date of transfer. We note that this grant of relief does not extend the time to file gift tax returns for Year 4 and Year 5. Such extensions are within the jurisdiction of the appropriate Area Director. See § 25.6081-1.

On Date 3 Supplemental Forms 709 were filed with the Cincinnati Service Center. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with those supplemental forms.

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,

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

Enclosures  
Copy for section 6110 purposes  
Copy of this letter

cc: