

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224
Person to Contact:
Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-167267-01
Date:
DECEMBER 03, 2002

Re:

LEGEND:

- Decedent -
- Daughter -
- Trust 1 -

- Trust 2 -

- Accountant -
- Day 1 -
- Day 2 -
- Day 3 -
- Day 4 -

Dear :

This is in response to the your letter dated September 6, 2002, and prior correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows:

On Day 1, 1996, Decedent created an irrevocable trust, Trust 1, for the benefit of Daughter. The terms of Trust 1 provide that during Daughter's lifetime, the trustees are authorized to pay to or apply the principal and/or net income for the benefit of Daughter or her descendants. At Daughter's death, the assets in Trust 1 are to be paid to Daughter's living descendants, per stirpes, but if there are none, to Decedent's then living descendants. Decedent has three daughters. Daughter has no descendants, but both of her sisters have children. Decedent did not allocate any of his generation-skipping transfer tax exemption to Trust 1 during his lifetime.

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On Day 2, 1997, Decedent created Trust 2, a revocable trust that became irrevocable on his death. Article VI of Trust 2 provides that the trust is to be divided upon Decedent's death into "Daughter's Exemption Trust" and "Daughter's Vested Trust." Daughter's Exemption Trust is to consist of assets totaling a fractional share of the trust assets, with the numerator of the fraction being the amount of Decedent's available GST exemption after taking into account all allocations by Decedent during life, or otherwise allocated by Decedent's executors, and the denominator is to be the value of the trust assets. The income from both trusts is to be paid to Daughter during her lifetime and the principal may be expended by the trustee for Daughter's support, health and education. Daughter has a general power of appointment over Daughter's Vested Trust. Upon Daughter's death, any assets in Daughter's Exemption Trust, and any assets in Daughter's Vested Trust that have not been appointed by her, are to be paid to her living descendants, per stirpes, but if there are none, then to Decedent's living descendants, per stirpes.

Decedent died on Day 3, 2000. Under Decedent's will, dated Day 2, 1997, a portion of Decedent's estate was to be added to Trust 2.

The Executrix of Decedent's estate retained Accountant, a certified public accountant, to prepare Decedent's United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706. Accountant had been Decedent's accountant for over 30 years. The Form 706 was filed on Day 4, 2001. Accountant failed to file a Schedule R with the Form 706 and, therefore, Decedent's available GST exemption was not allocated to Daughter's Exemption Trust.

You have requested an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make an allocation of Decedent's GST tax exemption with respect to Daughter's Exemption Trust.

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 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.

Under § 2642(a)(1), the inclusion ratio with 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 GST exemption under § 2631 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.

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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)) 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.

Under § 2632(e)(1) and § 26.2632-1(d)(2), a decedent's unused GST exemption is automatically allocated on the due date for filing the decedent's federal estate tax return to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation of GST exemption is irrevocable and an allocation made by the executor after the automatic allocation is made is ineffective. No automatic allocation is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST transfer.

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 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, 2001-34 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 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.

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

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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, Decedent's estate is granted an extension of time of 60 days from the date of this letter to make an allocation of Decedent's GST tax exemption that was available at Decedent's death to Daughter's Exemption Trust.

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. This election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

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

Enclosures

Copy for section 6110 purposes
Copy of this letter