

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Re:

Refer Reply To:
CC:PSI:04 – PLR-127915-04
Date: APRIL 29, 2005

Legend

- Decedent =
- Estate =
- Accountant =
- Trust 1 =

- Trust 2 =

- Date 1 =
- Date 2 =
- Date 3 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =

Dear :

This is in response to your authorized representative's letter of May 14, 2004, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption.

The facts and representations are summarized as follows. On Date 1, Decedent irrevocably created and funded Trust 1. Decedent made additional transfers to Trust 1 in Year 2, Year 3, Year 4, Year 5, and Year 6. On Date 2, Decedent irrevocably created and funded Trust 2. Under the terms of Trust 1 and Trust 2, income and principal are distributable to Decedent's descendants. Decedent timely filed gift tax returns, United States Gift (& Generation-Skipping Transfer) Tax Return, Form 709, reporting the transfers. It was contemplated that Decedent would allocate her available GST exemption to the transfers on those gift tax returns. However, in preparing the returns,

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Accountant failed to allocate any of Decedent's GST exemption to these transfers. Decedent died on Date 3.

Decedent's estate requests an extension of time to allocate Decedent's GST exemption to the transfers to Trust 1 in Years 2 through 6 and the transfer to Trust 2 on Date 2; that the allocations be effective as of the dates of each transfer; and that the date of transfer value of each of the transfers will be used in determining the amount of GST exemption to be allocated.

Section 2601 imposes a tax on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), in effect at the time of Decedent's transfer on Date 2, provided that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(a), in effect at the time of Decedent's transfers in Years 2 through 6, provided that, for purposes of determining the GST tax, 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 26.2632-1(b)(2)(i) 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 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).

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

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whether to grant relief under this paragraph, the time for making the allocation shall be treated as if not expressly prescribed by statute. Notice 2001-50, 2001-2 C.B. 189, provides that 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.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election.

Section 301.9100-1 through 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).

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving 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.

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 allocate Decedent's GST exemption to the Years 2 through 6 transfers to Trust 1 and the Date 2 transfer to Trust 2. The allocations will be effective as of the date of the transfers to the trusts, and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts.

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. The allocation of Decedent's GST exemption should be made on a supplemental Form 709 United States Gift (and

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Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures
Copy for section 6110 purposes