

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-159958-04
Date: NOVEMBER 16, 2005

LEGEND:

Decedent	=
Spouse	=
Trust	=
Accountant	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This is in response to your letter dated November 2, 2004, requesting an extension of time under section 2642(g) of the Internal Revenue Code and section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Decedent's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date 1, Decedent and Spouse created Trust. Article 3.1 of Trust provides that upon the death of the first grantor, Trust will become irrevocable. Trust became irrevocable on Decedent's death on Date 2. All property transferred to Trust at its creation was the separate property of Decedent.

Article 3.3 of Trust provides that upon the death of the first grantor, the trustee is to divide the portion of the trust estate not used for the payment of the deceased grantor's expenses, taxes, and specific distributions into three separate trusts: the Grantor's Trust, the Marital Trust, and the Family Trust.

The Grantor's Trust was to be funded with the surviving spouse's separate property and community property interest in community property. This trust has not been funded.

The Marital Trust was to be funded with the pecuniary amount necessary to eliminate any federal estate tax with respect to the estate of the first grantor to die (hereinafter "Decedent"). The Marital Trust was to be divided into two trusts, the Exempt Marital Trust and the Non-Exempt Marital Trust. The Exempt Marital Trust was to be funded with property equal in value to that portion of Decedent's GST exemption not allocated to the Family Trust, and the remaining Marital Trust assets were to fund the Non-Exempt Marital Trust. Both the Exempt Marital Trust and the Non-Exempt Marital Trust have been funded. Pursuant to Trust, upon the death of the surviving spouse, the remaining principal and accrued income of the Exempt Marital Trust is to be distributed to the Exempt Family Trust, and the remaining balance of the Non-Exempt Marital Trust is to be distributed to the Non-Exempt Family Trust.

The Family Trust was to be funded with the balance of Decedent's property remaining after the funding of the Marital Trust. Pursuant to Trust, the Family Trust was to be divided into two trusts, the Exempt Family Trust and the Non-Exempt Family Trust. The Exempt Family Trust was to be funded with property equal in value to Decedent's available GST exemption, and any remaining Family Trust assets were to fund the Non-Exempt Family Trust. The Non-Exempt Family Trust has not been funded.

The Family Trust is to be held for the primary benefit of the children and grandchildren of Decedent and Spouse. Pursuant to Trust, the trustee of the Family Trust has the discretion to pay income and principal to the beneficiaries as the trustee deems necessary and/or advisable. Provided the Family Trust does not terminate as a result of such discretionary distributions, it will continue for the maximum period permitted by law.

The executor of Decedent's estate hired Accountant to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Accountant filed for an extension of time to file the Form 706 until Date 3.

It is represented that on Date 3, the information needed to accurately and completely prepare the Form 706 was unavailable, despite the best efforts of the executor. Accountant informed the executor that no adverse consequences would result from filing a late Form 706 because, as a result of the marital deduction, there would be no federal estate tax liability. However, Accountant failed to advise the executor that failure to timely file the Form 706 would result in a deemed allocation of Decedent's available GST exemption. On Date 4, the executor filed the estate tax return and allocated Decedent's available GST exemption amount in accordance with the terms of Trust.

You have requested an extension of time under section 2642(g) and sections 301.9100-1 and 301.9100-3 to make an allocation of Decedent's GST exemption.

Section 2601 imposes a tax on every generation-skipping transfer (GST), as defined in sections 2611 through 2613, made after October 26, 1986, by a “transferor” to a “skip person.”

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 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a), as in effect for the years at issue in the present case, 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 section 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 2632(a) provides that any allocation by an individual of his GST exemption 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 2632(e) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed in section 2632(a) shall be deemed to be allocated first, to property which is the subject of a direct skip occurring at such individual's death and, second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 2642(b)(2) provides that if property is transferred as a result of the death of the transferor, the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for estate tax purposes and such allocation shall be effective on and after the date of the death of the transferor.

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 section 2642(b)(2).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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 shall be treated as not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under section 2642(g)(1)(B), the time for allocating the GST exemption to transfers at death is 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 section 2642(b)(2) under the provisions of section 301.9100-3.

Section 301.9100-1 through 301.9100-3 provide 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 section 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 section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(2) under the provisions of section 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 sections 301.9100-2 and 301.9100-3 to make a regulatory 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). Requests for relief under section 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.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, an extension of time to make a timely allocation of Decedent's GST exemption under section 2632 is granted until Date 4, the date the estate tax return was filed.

The allocation of GST exemption should be made on a supplemental Form 706 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 ruling, it is subject to verification on examination.

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: