

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B09 / PLR-155353-01  
Date:  
April 18, 2002

Legend

- Grantor =
- Spouse =
- Original Trust =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Spouse's Revocable Trust =
- Date 5 =
- Decedent's Trust =
- Marital Trust =
- Date 6 =
- Date 7 =

Dear

This letter responds to your request dated June 17, 2001, and subsequent correspondence, submitted on behalf of Trust, requesting rulings under § 301.9100-3 of the Procedure and Administration Regulations.

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The facts submitted and representations made are summarized as follows: Grantor and Spouse created Original Trust on Date 1 and subsequently amended it six times from Date 2 to Date 3. On Date 4, Spouse withdrew her half of the community funds from Original Trust and created Spouse's Revocable Trust. Date 4 is prior to October 22, 1986. Grantor died on Date 5. On Grantor's death, the half of the assets remaining in the Original Trust were divided between Decedent's Trust and Marital Trust. A Form 706, United States Estate (and Generation-Skipping) Tax Return, was timely filed on or about Date 6 by Spouse as the personal representative of Grantor's estate. A supplemental Form 706 was filed on or about Date 7. Statements relating to Grantor's mental disability were not filed with either Form 706. The trustee of Original Trust and Marital Trust represents that no additions, either actual or constructive, have been made to either Original Trust or Marital Trust since October 22, 1986.

You have requested an extension of time under § 301.9100-3 to file the physician certification required under § 26.2601-1(b)(3)(iii)(A) of the Generation-Skipping Transfer Tax Regulations.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i) of the Generation-Skipping Transfer Tax Regulations, if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or care of the decedent's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706 either - (1) a certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

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Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, request for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Consequently, we grant an extension of time for filing the required physician certification with the Cincinnati Service Center. You should prepare a supplemental 706 and attach the physician certification(s) and a copy of this letter within 60 days of the date on this letter. A copy of this letter is enclosed for this purpose.

Except as ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion as to whether the Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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 rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent your representative.

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This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,  
Paul F. Kugler  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes