

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200419028**

Release Date: 5/7/04

Index Number: 2642.00-00; 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09 – PLR-159251-03

Date:

January 29, 2004

LEGEND

Decedent =

Date 1 =

Life Insurance Trust =

Beneficiary 1 =

Beneficiary 2 =

Beneficiary 3 =

Beneficiary 4 =

\$a =

Year 1 =

Year 2 =

\$b =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =
Year 8 =
Year 9 =
Year 10 =
Year 11 =
Year 12 =
Year 13 =
\$c =
Attorney =
Date 2 =
\$d =
\$e =

Dear :

This is in response to your letter of September 29, 2003, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g)(1) of the Internal Revenue Code to make allocations of Decedent's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Decedent established Life Insurance Trust for the benefit of Beneficiary 1, Beneficiary 2, Beneficiary 3, and Beneficiary 4. Beneficiary 2, Beneficiary 3, and Beneficiary 4 are skip persons.

Article Second of Life Insurance Trust provides that the trust is irrevocable and may not be altered or amended in any respect.

Article Fifth provides, in part, that during Decedent's lifetime, the trustee may obtain insurance policies on the life of Decedent. In addition, the trustee is authorized to pay the insurance premiums from the net income of the trust, from funds furnished by

Decedent or the trust beneficiaries, or from funds obtained from selling a portion of the trust principal or from borrowing against the cast surrender values of the policies.

Article Sixth provides, in part, that after Decedent's death, the trustee shall hold the share for Beneficiary 1 in further trust for the remainder of Beneficiary 1's lifetime. The trustee shall hold the three remaining shares until the beneficiary of each respective share has attained the age of thirty-five.

Article Eighth provides, in part, that at any time during the calendar year in which a gift is made by any person to the trust, each of Beneficiary 1, Beneficiary 2, Beneficiary 3, and Beneficiary 4 shall have the absolute right at all times during the remainder of that calendar year or until the expiration of thirty days from the receipt of such gift by the trustee, whichever occurs last, to demand immediate distribution to herself of a cumulative amount during such year equal to the lesser of: (1) the amount of gift tax annual exclusion available under § 2503(b), or (2) the maximum amount over which the lapse of a power to withdraw is not considered a release of such power under §§ 2041 and 2514.

Decedent contributed cash in the amount of \$a to Life Insurance Trust in Year 1. In Year 2, Decedent contributed cash in the amount of \$b to Life Insurance Trust. In Year 3, Year 4, Year 5, Year 6, Year 7, Year 8, Year 9, Year 10, Year 11, Year 12, and Year 13, Decedent contributed cash in the amount of \$c to Life Insurance Trust.

Decedent consulted with her long-time broker as well as Attorney in formulating her estate plan. Attorney prepared Life Insurance Trust for Decedent but did not mention any GST aspects of the trust, nor did he advise filing Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns to allocate Decedent's GST exemption to the contributions to Life Insurance Trust. Accordingly, allocations of Decedent's GST exemption were not made.

Decedent died on Date 2. At the time of Decedent's death, \$d of her GST exemption was available for allocation.

The representatives of Decedent's estate now request an extension of time under § 2642(g) and § 301.9100-3 to make allocations of Decedent's GST exemption to her Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, Year 7, Year 8, Year 9, Year 10, Year 11, Year 12, and Year 13 transfers to Life Insurance Trust, based on the value of the property transferred as of the respective dates of transfer.

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 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)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) 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 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) 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, 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 § 2642(g)(1), which was enacted into law on June 7, 2001.

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 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 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.

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). Under § 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 § 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.

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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time of 60 days from the date of this letter is granted to make allocations of Decedent's available GST exemption as follows: \$a to the Year 1 transfer to Life Insurance Trust, \$b to the Year 2 transfer to Life Insurance Trust, \$c to each of the Year 3, Year 4, Year 5, Year 6, Year 7, Year 8, Year 9, Year 10, and Year 11 transfers to Life Insurance Trust, and \$e to the Year 12 transfer to Life Insurance Trust. The allocations will be effective as of the dates of the respective transfers to Life Insurance Trust. No relief is granted with respect to the Year 13 transfer to Life Insurance Trust because the allocations for Year 1 through Year 12 will exhaust Decedent's available GST exemption.

These allocations should be made on Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each supplemental Form 709. Copies of the letter are enclosed for this purpose.

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.

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.

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

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.

Sincerely,

Heather C. Maloy

Heather C. Maloy
Associate Chief Counsel
Passthroughs & Special Industries

Enclosures

Copy of letter
Copy for 6110 purposes