

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200439031**

Release Date: 9/24/04

Index Number: 9100.00-00, 2642.00-00

Person To Contact:

, ID #

Telephone Number:

Refer Reply To:

CC:PSI:B09 – PLR-157475-03

Date:

May 25, 2004

Re:

LEGEND

Taxpayer =

Date 1 =

Trust 1 =

Stock X =

Daughter =

Son-in-law =

Year 1 =

Date 2 =

Year 2 =

Date 3 =

Trust 2 =

Son =

Daughter-in-law =

Date 4 =

Year 3 =

Date 5 =

Year 4 =

Date 6 =

Dear :

This is in response to your letter of September 26, 2003, and subsequent correspondence, 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 Taxpayer's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer established Trust 1, a grantor retained income trust. On the same day, Taxpayer transferred shares of Stock X to the trust. No other additions were made to Trust 1 after Date 1.

Article II, paragraph 1 of Trust 1 provides, in part, that during the period that ends on the date of Taxpayer's death or five years after the date of execution of the trust agreement, whichever occurs first, the trustee shall pay to Taxpayer the entire net income of the trust fund.

Article II, paragraph 2 provides, in part, that in the event Taxpayer dies prior to the expiration of five years after the execution of the trust, the trustee shall distribute the then remaining principal and accrued income of the trust to the personal representative of Taxpayer's estate to be administered as a part thereof.

Article II, paragraph 3 provides, in part, that in the event that that Taxpayer is living five years after the date of execution of the trust agreement, the trustee shall on such date set apart the then remaining principal of the trust fund to constitute a separate trust for the primary benefit of Daughter and Son-in-law. Until the death of the survivor of Daughter and Son-in-law, the trustee shall pay the entire net income of the trust to Daughter and Son-in-law in equal shares, or if only one is surviving, to the survivor of them, provided, however, that the trustee may withhold all or any part of the net income and may either distribute the withheld income among Daughter's children in such proportions as the trustee deems advisable or accumulate the withheld income and add it to principal. The trustee shall also pay to any of Daughter, Son-in-law, and Daughter's children so much of the principal of the trust as the trustee deems advisable. Upon the death of the survivor of Daughter and Son-in-law, the then remaining principal and accrued income of the trust shall be allocated among the then surviving issue of Daughter, per stirpes, or if none, to Taxpayer's then surviving issue, per stirpes.

Taxpayer filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1. On the Form 709, which was prepared and filed by Taxpayer's tax advisors, Taxpayer reported the Date 1 transfer to Trust 1. However, Taxpayer's tax advisors inadvertently failed to allocate any of Taxpayer's GST exemption to that transfer.

Taxpayer's interest in Trust 1 terminated on Date 2. Taxpayer did not file a Form 709 for Year 2 or otherwise allocate any of her GST exemption to Trust 1.

On Date 3, Taxpayer created Trust 2, an irrevocable trust, for the benefit of Son and his descendants.

Article IV of Trust 2 provides, in part, that Son and his children shall have the right to withdraw from the trust during each calendar year in which a contribution is made to the trust an amount determined by dividing the amount of contribution by three, provided, however, that the amount of withdrawal by Son or any of his children during any calendar year shall not exceed the amount of ten thousand dollars.

Article V provides, in part, that during Son's lifetime, the trustee shall pay to Son the entire net income of the trust, provided, however, that the trustee may withhold all or any part of the net income and may either distribute the withheld income among Son's children in such proportions as the trustee deems advisable or accumulate the withheld income and add it to principal. The trustee shall also pay to any of Son and Son's children such portion of principal as the trustee deems advisable. Upon Son's death, the then remaining principal and accrued income of the trust shall be allocated among the then surviving issue of Son, per stirpes, or if none, to Daughter-in-law if she is then surviving, or if she is not then surviving to Taxpayer's then surviving issue, per stirpes.

In Date 4, Taxpayer transferred shares of Stock X to Trust 2. Taxpayer filed a Form 709 for Year 3. On the Form 709, which was prepared and filed by Taxpayer's tax advisors, Taxpayer reported the Date 4 transfer to Trust 2. However, Taxpayer's tax advisors inadvertently failed to allocate any of Taxpayer's GST exemption to that transfer.

In Date 5, Taxpayer transferred additional shares of Stock X to Trust 2. No additions were made to Trust 2 after Date 5. Taxpayer's tax advisors prepared and filed a Year 4 Form 709 on which the Date 5 transfer to Trust 2 was reported. However, Taxpayer's tax advisors inadvertently failed to allocate any of Taxpayer's GST exemption to that transfer.

Taxpayer died on Date 6. Taxpayer's estate now requests an extension of time under § 2642(g) and § 301.9100-3 to make allocations of Taxpayer's GST exemption to the transfers made to Trust 1 and Trust 2 during Taxpayer's lifetime.

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 (ETIP), its value at the time of the close of the ETIP, 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 ETIP, on and after the close of such ETIP.

Section 2642(f)(1) provides, generally, that except as provided in regulations, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the ETIP (and the value of such property shall be determined under § 2642(f)(2)).

Section 2642(f)(2) provides that in the case of any property to which § 2642(f)(1) applies, the value of such property shall be its value for purposes of chapter 11 if such property is includible in the gross estate of the transferor (other than by reason of § 2035), or if such property is not includible in the gross estate of the transferor its value as of the close of the ETIP (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

Section 2642(f)(3) provides that for purposes of § 2642(f), the term "estate tax inclusion period" means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event

extend beyond the earlier of the date on which there is a generation-skipping transfer with respect to such property, or the date of the death of the transferor.

Section 26.2632-1(c)(1) provides, in part, that where an allocation has not been made prior to the termination of the ETIP, an allocation is effective at the termination of the ETIP during the transferor's lifetime if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the ETIP terminates (timely ETIP return).

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, 2001-2 C.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, the personal representative of Taxpayer's estate is granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer's GST exemption with respect to the transfers to Trust 1 and Trust 2. The allocation to Trust 1 will be effective as of Date 2, the time of the close of the ETIP, and the value of Trust 1 on Date 2 will be used in determining the amount of GST exemption to be allocated to Trust 1. The allocations to Trust 2 will be effective as of the dates of the transfers, and the gift tax values of the transfers to Trust 2 will be used in determining the amount of GST exemption to be allocated to Trust 2.

The allocation to Trust 1 should be made on a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. The allocations to Trust 2 should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each Form 709 and supplemental Form 709. Copies of the letter are enclosed for this purpose.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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 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 and Special Industries)

Enclosures

Copy of Letter

Copy for 6110 purposes