

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: _____, ID No.

Telephone Number:

Refer Reply To:
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PLR-154665-04
Date:
February 03, 2005

LEGEND

- Taxpayer =
- Date 1 =
- State =
- Irrevocable Trust =
- Son =
- x =
- Company =
- Accounting Firm =
- Date 2 =
- Year 1 =

Dear _____ :

This is in response to your authorized representative's letter dated October 13, 2004, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Taxpayer's generation-skipping transfer (GST) tax exemption.

The facts and representations made are summarized as follows: On Date 1, Taxpayer, a resident of State, established Irrevocable Trust for the benefit of Son. The same day, Taxpayer funded Irrevocable Trust with x shares of common stock in Company.

Paragraph 1.1 of Irrevocable Trust provides that during Son's lifetime, the trustee shall pay the trust income to Son as needed to provide for Son.

Paragraph 1.2 provides that Son shall have the right from time to time during his life and at his death, to appoint trust property to his descendants, spouses and surviving spouses of his descendants, and charities, but not in any manner that would discharge any legal obligation of his to support the appointee or any other kind of legal obligation.

Paragraph 1.3 provides that upon Son's death, any property remaining in the trust and not appointed by him shall be divided to provide one equal share to each of Son's then living children, to be distributed outright to such child, and one equal share for the then living descendants, collectively, of each then deceased child of Son, to be distributed to those descendants, per stirpes, except as paragraph 1.4 provides for a trust.

Paragraph 1.4 provides that any property distributable, other than by the exercise of a power of appointment or the trustee's discretion, to a person, other than a child of Son, under the age of 30 shall be retained as a separate trust for the benefit of that person.

Taxpayer retained Accounting Firm to prepare a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return with regard to the Date 1 transfer to Irrevocable Trust. In preparing the return, Accounting Firm reported the transfer of Company stock to Irrevocable Trust, but inadvertently failed to allocate any of Taxpayer's GST exemption to the transfer. The gift tax return, as prepared by Accounting Firm, was timely-filed by Taxpayer.

Taxpayer died on Date 2. Following Taxpayer's death, legal counsel for Taxpayer's estate discovered that no GST allocation had been made to Taxpayer's Date 1 transfer to Irrevocable Trust.

Accordingly, Taxpayer's estate now requests that an extension of time be granted under § 2642(g) and § 301.9100-3 to make an allocation of Taxpayer's GST exemption with respect to the Date 1 transfer to Irrevocable Trust equal to the reported gift tax value of that transfer, and that an allocation of Taxpayer's GST exemption pursuant to the relief granted herein will result in a zero inclusion ratio for Irrevocable Trust as of the date of the gift.

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 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) in effect at the time of the transfer provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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 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, 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) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12 (within the meaning of § 2001(f)(2)), and such allocation shall be effective on and after the date of such transfer.

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). 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, 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 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 with respect to the transfer made by Taxpayer to Irrevocable Trust on Date 1, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, we grant an extension of time of 60 days from the date of this letter for Taxpayer's estate to allocate Taxpayer's GST exemption to the Date 1 transfer to Irrevocable Trust. The allocation will be effective as of Date 1, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated. If an allocation of Taxpayer's GST exemption is made pursuant to the relief herein granted and provided that the amount of GST exemption allocated to Irrevocable Trust is equal to the gift tax value of the Date 1 transfer to Irrevocable Trust, Irrevocable Trust will have an inclusion ratio of zero as of the date of the gift.

The allocation of Taxpayer's GST exemption should be made on a supplemental Form 709 for Year 1 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is 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 addition, we express or imply no opinion regarding the value of the property transferred to Irrevocable Trust.

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 authorized representative.

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
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy of letter
Copy for 6110 purposes