

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4\PLR-132579-02
Date: DECEMBER 13, 2002

Re:

Legend:

Decedent =
J =
K =
L =
M =
CPA =
Year 1 =
Year 2 =
Year 9 =
Year 10 =
Date 1 =
Date 2 =
\$v =
\$s =
\$t =
\$w =
\$x =
\$y =
\$z =

Dear :

This is in response to your June 7, 2002 submission in which you requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations

and § 2642(g) of the Internal Revenue Code to allocate Decedent's remaining GST exemption to four irrevocable trusts.

According to the facts submitted, on Date 1, Decedent created four irrevocable trusts, one for the individual benefit of each of Decedent's four children, J, K, L, and M, and the living descendants of each child, (referred to as "the Four Trusts.") The four children of Decedent, as of Date 1, had a total of 17 living descendants. Each of the Four Trusts has similar terms, except that the primary beneficiary of each trust is a different child of Decedent.

Section 3.2 of each of the four trusts provides that following an inter vivos transfer to the trust, the primary beneficiary of the trust will have the right, within 30 days after receiving notice that assets had been added to the trust, to withdraw up to \$10,000 of each year's additions. If the value of the property transferred to the trust exceeds \$10,000, each of the Primary beneficiary's then living descendants has the right, within 30 days after receiving notice that a transfer has been made to the trust, to withdraw a pro rata share of the excess addition. Withdrawal rights not exercised during such period will lapse.

Section 3.5 provides that net income, if any, will be paid to the child, child's descendants or periodically added to principal. The trustee of the trust is authorized to disburse from the principal of the trust, such amounts as the trustee deems advisable to provide for the health, education, and support of the current income beneficiaries.

Under § 3.7, the child may appoint part or all of the assets of the trust by an instrument in writing delivered to the trustee during his life, or by his will, to his spouse (at the time of such appointment), his widow, or a descendant of Decedent (other than himself), in trust or otherwise, and on such terms and conditions, as the child determines.

Section 3.8 provides that upon the child's death, the remaining unappointed assets of the trust and property transferred to it from any sources will be held in trust for the benefit of the child's then living descendants.

Section 6.1 provides that regardless of other provisions in the trust, the trustee will divide property held in any trust with a GST inclusion ratio of less than one into separate fractional trusts, each to have an inclusion ratio of one or zero. Each such trust will be administered as a separate trust.

On Date 1, Decedent transferred a total of \$w to each of the four trusts. It is represented that Decedent filed a timely Form 709, United States Gift (& Generation-Skipping Transfer) Tax Return to report her Date 1 gifts. On Schedule R of the return, Decedent allocated \$w of her Generation-Skipping Transfer (GST) exemption to each of the four trusts.

It is represented that in each year from Year 2 through Year 9 Decedent transferred \$x to each of the four trusts. It is represented that each of these transfers to

the trusts qualified for the annual gift tax exclusion from gifts under § 2503(b). Decedent's accountant, CPA, failed to complete a Form 709 for each of calendar Years 2 -9 transfers. CPA erroneously believed that because the Year 2 -9 transfers qualified for the annual exclusion, CPA did not need to file a Form 709 for each of those years. As a result, Decedent did not allocate any of her remaining GST exemption to the trusts, in order to cause the trusts to have a zero inclusion ratio.

Prior to Decedent's death in Year 10, Decedent made an additional transfer to each trust in Year 10 in the amount of \$x. Each of the Year 10 transfers were, pursuant to the terms of section 6.1, added to a separate trust which was intended to be exempt from the GST tax as a result of GST exemption that would be allocated to the separate trust. The Executor of the estate timely filed Decedent's Form 709 for Decedent's Year 10 gifts and allocated \$x of Decedent's remaining GST exemption to each of the four trusts.

Article 4 of Decedent's will provides that the residue of Decedent's estate is to be divided into four equal shares, one share for each of Decedent's four children. From each share an amount equal to \$y, less the amount of GST exemption allocated or to be allocated, as a result of gifts made by Decedent during her lifetime to a trust for the benefit of the respective child of Decedent will be added to such trust. The balance of the child's share is to be distributed to the child outright, free of trust.

On Date 2, the Executor filed the Decedent's Form 706, United States Estates (and Generation-Skipping Transfer) Tax Return. It is represented that the amount of the Decedent's unused exemption at that time was \$z. On Schedule R of Form 706, Executor allocated \$v of Decedent's remaining GST exemption to the portion of each of the four shares that passed pursuant to the terms of Decedent's will, to the Four Trusts, The GST exemption was allocated to the GST exempt trust within each of Trusts J, K, L, and M. It is represented that the amount of Decedent's remaining GST exemption after this allocation is \$t.

It is represented that the Executor divided the Non-exempt portion of each of the Four Trusts into two separate trusts each having the same inclusion ratio. On Schedule R of the estate tax return Executor also allocated \$s to the smaller of each child's Non-exempt trusts in order to produce an inclusion ratio of zero. These trusts were then merged with the GST Exempt Trusts. As a result, each child has one GST Exempt Trust and one Non-exempt Trust.

If an extension of time is granted to allocate Decedent's GST exemption to the Year 2 through Year 9 transfers, the Executor will file a supplemental Form 709 for Year 10 and a supplemental Form 706 to correctly reflect the allocations of Decedent's GST exemption to the Year 2 through Year 9 transfers.

At this time, Executor requests an extension of time under § 301.9100-3 to allocate Decedent's GST exemption under § 2642(b)(1) to the Years 2 through 9 transfers. Executor requests that such allocations are to be made based on the gift tax

value of the property transferred to the trusts as of the dates of each transfer in Years 2 through 9.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer (GST) 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 the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

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 26.2632-1(d)(1) provides that the executor may allocate GST exemption with respect to a lifetime transfer by a decedent of property that is not included in the transferor's gross estate on a 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 § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

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 § 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 this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, 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.

Under § 301.9100-1(c), 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. Notice 2001-50, 2001-34 I.R.B. 189, 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.

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 the grant of 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. The executor of Decedent's estate is granted an extension of time of 60 days from the date of this letter to allocate Decedent's available GST exemption to the Year 2 through Year 9 transfers to the trusts for which Decedent is the transferor. The allocations will be effective as of the date of each transfer to the trusts and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts.

The ruling contained in this letter is 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.

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.

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. The allocations of GST exemption for Decedent should be made on a supplemental Form 706. The supplemental Form 709 is to be filed with the Internal Revenue Service, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter