

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4\PLR-116815-03

Date:

MARCH 31, 2003

Re:

Legend:

Trust =  
Decedent =  
Spouse =  
CPA Firm =  
Daughter =  
Date 1 =  
Date 2 =  
Date3 =  
\$x =  
\$y =  
\$z =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =  
Year 6 =

Dear :

This is in response to your authorized representative's February 23, 2003, submission in which an extension of time was requested 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 a transfer to an irrevocable life insurance trust, Trust, created by Decedent.

According to the facts submitted, on Date 1, Decedent created Trust for the benefit of Spouse and Decedent's descendants.

The pertinent provisions of Trust provide as follows:

Article II(A) of Trust provides that the trustees may in their discretion, purchase and own life insurance policies on the life of Decedent.

Under Article IV(A)(1), during the lifetime of Decedent, the trustees may, in their discretion, distribute all or a portion of the income of Trust not needed to pay life insurance premiums on policies owned by the Trust to one or more or all of Spouse, and Decedent's descendants.

Under Article IV(A)(2), upon Decedent's death, if Spouse, survives Decedent, then during the remainder of Spouse's lifetime, the trustees are to distribute to Spouse or for her benefit so much of the income and corpus of Trust, as the trustees may deem necessary or advisable for her maintenance in health and reasonable comfort. During the lifetime of Spouse, the trustees are also to distribute to or for the benefit of Decedent's descendants, or to Spouse for their benefit, so much of the remaining income and corpus of Trust as trustees may deem necessary or advisable for their education and maintenance in health and reasonable comfort. Any income not so distributed is to be accumulated and added to the corpus of Trust.

Article IV(A)(3) provides that if Spouse survives Decedent, then after Decedent's death, Spouse is to have the power, by specific reference to an instrument in writing delivered to the trustees during Spouse's lifetime or in Spouse's valid last Will, to direct the trustees to alter the division of Trust as otherwise provided in Article IV(B) among Decedent's descendants and to accelerate the distribution in such manner and such equal or nonequal payments as Spouse sees fit.

Article VIII(C) grants certain specified individuals the right to request distributions from the trust with respect to annual contributions to Trust.

In each of Years 1, 2, 3, 4, and 6 Decedent made gifts to Trust. Decedent employed a CPA to prepare and file the federal gift tax returns (Form 709) to report the transfers that were made in each of Years 1, 2, 3, 4, and 6 to Trust. On each return Decedent allocated Generation-Skipping Transfer Tax exemption in an amount equal to the total gifts made to Trust in each of the five years.

In Year 5, on Date 2, Decedent also made a gift to Trust of \$z. CPA prepared Decedent's federal gift tax return for Year 5. On the return CPA allocated only \$x (that portion of the gift that exceeded the amount of the gift reported as qualifying for the gift tax annual exclusion) of GST exemption to the gift made to Trust on Date 2. CPA states in an affidavit submitted with the ruling request that the failure to allocate \$z of GST exemption to the Date 2 transfer was unintentional and inadvertent.

Decedent died on Date 3.

CPA on behalf of Decedent requests an extension of time under § 301.9100-3 to allocate \$y of Decedent's remaining GST exemption under § 2642(b)(1) to Trust. CPA requests that such allocation is to be made based on the federal gift tax value of the property transferred to Trust as of Date 2.

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 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in section 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the 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. CPA is granted an extension of time until 60 days after the date of this letter to allocate \$y of Decedent's remaining available GST exemption to Decedent's Year 5 transfer to Trust. The allocation will be effective as of the date in Year 5 that the transfer to Trust was made and the gift tax value of the transfer to Trust will be used in determining the inclusion ratio with respect to Trust.

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 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 709. The supplemental Form 709 is to be filed with the Internal Revenue Service Center, 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

cc: