

Internal Revenue Service

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Person To Contact:
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Date: DECEMBER 21, 2012

Taxpayer =
Trust =
Date 1 =
Date 2 =
Year 1 =
Year 2 =
Accounting Firm =
Law Firm 1 =
Law Firm 2 =

Dear :

This letter responds to your letter dated July 18, 2012, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Generation-Skipping Transfer (GST) exemption to transfers to a trust.

Facts:

On Date 1, Taxpayer created an irrevocable trust (Trust) that has GST potential. On Date 2, Taxpayer funded Trust with limited partnership interests. Dates 1 and 2 are in Year 1, and Year 1 is prior to December , 20 .

Taxpayer retained Accounting Firm to prepare a Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the Date 2 transfer to Trust. On behalf of Taxpayer, Law Firm 1 instructed Accounting Firm to allocate Taxpayer's GST exemption to the Date 2 transfer. Accounting Firm failed to allocate Taxpayer's GST exemption to the Date 2 transfer reported on Taxpayer's Year 1 Form 709. In Year 2, Taxpayer retained Law Firm 2 to provide estate planning advice. After reviewing Taxpayer's Year 1 Form 709, Law Firm 2 informed Taxpayer of Accounting Firm's failure to allocate Taxpayer's GST exemption to the Date 2 transfer.

Taxpayer represents that no taxable terminations or distributions have occurred. Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to allocate Taxpayer's GST exemption to the Date 2 transfer to Trust.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer, which 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 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)(1) provides that for purposes of chapter 13, the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect at the time of the transfers, 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime 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, 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 § 2642(g)(1)(A), 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 (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 GST 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 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) 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, Taxpayer is granted an extension of time of 120 days from the date of this letter to allocate his GST exemption to the Date 2 transfer in Year 1. The allocations will be effective as of

the date of the transfer to Trust. The value of the property of which Taxpayer is the transferor for purposes of chapter 13, as determined for federal gift tax purposes, will determine the amount of Taxpayer's GST exemption that Taxpayer may allocate to Trust.

The allocations should be made on a supplemental Form 709 for Year 1 and filed with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. The enclosed copy of this letter should be attached to the supplemental Form 709.

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) of the Internal Revenue Code 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,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____

James F. Hogan
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes
One copy of this letter