

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 - PLR-114610-02

Date:

July 12, 2002

Re:

LEGEND

Decedent =

Date 1 =

Revocable Trust =

Bank =

Son =

Daughter =

Date 2 =

Date 3 =

Date 4 =

Probate Court =

Son-In-Law =

Date 5 =

Daughter's
Exempt Trust =

Daughter's Non-
Exempt Trust =

\$x =

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Dear _____ :

This is in response to your letter dated March 5, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Decedent's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Decedent created Revocable Trust. Bank, Son and Daughter were named as the trustees of Revocable Trust.

Article II(A) of Revocable Trust provides that, upon Decedent's death the trustee shall hold, administer and dispose of the trust property in accordance with the provisions of Article III of Revocable Trust.

Article III provides generally that, upon Decedent's death the trustee shall divide the trust property into separate, equal shares so as to provide one (1) share for each child of Decedent living at the time of Decedent's death and one (1) share for the then living lineal descendants of each deceased child of Decedent. The share allocated to each child shall be held in accordance with Article III of Revocable Trust and the share allocated to the then living lineal descendants of each deceased child shall be held in accordance with Article IV of Revocable Trust. The share allocated to each child shall constitute and be administered as a separate trust.

Article III, paragraph 1 provides that, during the lifetime of each child, the trustee shall, from time to time, pay to or for the benefit of any one or more of the child and the child's lineal descendants, so much of the net income and principal of such trust in such proportions as the trustee shall determine in the exercise of absolute discretion.

Article III, paragraph 2 provides that, upon attaining the age of eighteen (18) years, each child shall have the power, exercisable at any time by notice in writing to the trustee, to appoint any part or all of the principal and income of his or her trust to one or more of his or her lineal descendants in such manner and at such times as the child shall designate. The power of appointment shall not be exercised in favor of the child, his or her estate, his or her creditors or the creditors of his or her estate.

Article III, paragraph 3 provides that, upon the death of each child, all or any part of the principal and income of the child's trust shall be distributed to one or more of Decedent's lineal descendants in such manner and at such times as the child shall appoint by his or her last will and testament. The power of appointment shall not be exercised in favor of the child, his or her estate, his or her creditors or the creditors of his or her estate.

Article III, paragraph 4 provides that, to the extent the powers of appointment in paragraphs 2 and 3 are not fully exercised, the trustee shall continue to hold the trust

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property in accordance with Article IV of Revocable Trust if the deceased child has any then living lineal descendant. If the deceased child has no then living lineal descendants, the trust property shall be held in accordance with Article III for the remaining lineal descendants of Decedent, or if there are none, the trust property shall be paid to the child's estate absolutely.

Article IV provides that, in the event the trustee is directed at any time to hold trust property for the benefit of the then living lineal descendants of a deceased child of Decedent in accordance with Article IV, the trustee shall divide such trust property as it shall exist at such time into separate, equal shares so as to provide one (1) share for each child of the deceased child living at such time and one (1) share for the then living lineal descendants, per stirpes, of each deceased grandchild of Decedent.

Article IV further provides that the share allocated for each grandchild be administered as a separate trust and directs the trustee to expend or apply so much of the net income of each trust as the trustee, in the trustee's sole discretion, may deem necessary or advisable for the education (including college, professional, and general studies at any scholastic level or trade school), support, care, health, and general welfare of the grandchild for whom the trust was created, whether born before or after the date of execution of Revocable Trust.

In addition, Article IV provides that the trust for each grandchild shall continue until the earlier of each grandchild's attaining the age of thirty-five (35) years or his or her death. Upon the termination of each grandchild's trust, the trustee shall distribute the remaining trust property to the grandchild for whom the trust was created if the grandchild is then living. If the grandchild is not then living, the trustee shall distribute the remaining trust property to the then living lineal descendants of the grandchild, in equal shares, per stirpes.

Decedent died testate on Date 2, survived by Son, Daughter and Daughter's descendants. Under her last will and testament, Decedent bequeathed the residue of her estate to Revocable Trust, which became irrevocable upon Decedent's death.

A will contest arose soon after Decedent's death. A temporary or permanent administrator was not appointed for Decedent's estate during the will contest. As a result, the estate applied for and received an extension of time to file its United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) until Date 3.

Eventually, the will contest was settled and the executors named in Decedent's last will and testament declined to serve. The Probate Court appointed Son-In-Law as independent administrator of Decedent's estate on Date 4, nine days before Decedent's estate tax return was due. At that time, Son was ill and unavailable for consultation regarding the return.

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Son-In-Law, in his capacity as independent administrator, timely filed Decedent's estate tax return on Date 5. In doing so, Son-In-Law inadvertently omitted Schedule R and made no affirmative allocation of Decedent's GST exemption. Subsequently, the trust created for Daughter under Article II(A) of Revocable Trust was severed on a fractional share basis into two separate trusts known as Daughter's Exempt Trust and Daughter's Non-Exempt Trust.

Son-In-Law, acting as independent administrator of Decedent's estate, has requested an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 to make an allocation of Decedent's GST exemption to Daughter's Exempt Trust.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A 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)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a) provides that any allocation by an individual of his 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)(2)(A) provides that, if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.

Section 2642(b)(2)(B) provides that any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

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 this paragraph.

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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.

Notice 2001-50, 2001-34 I.R.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.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in § 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.

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. See Notice 2001-50. Further, in accordance with § 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. Accordingly, Taxpayer 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Son-In-Law, in his capacity as independent administrator of Decedent's estate, is granted an extension of time of 60 days from the date of this letter to allocate \$x of Decedent's GST exemption to Daughter's Exempt Trust. The allocation will be effective as of Date 2, the date of Decedent's death, and the value of the property, for purposes of determining the amount of GST exemption to be allocated, shall be its value as finally determined for purposes of chapter 11. The allocation should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this

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letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Pursuant to the Power of Attorney and Declaration of Representative on file with this office, a copy of this letter is being sent to the taxpayer representative.

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.

Sincerely,

William P. O'Shea

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of letter

Copy for 6110 purposes