

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-140840-02
Date:
September 16, 2002

Re:

LEGEND:

- Decedent =
- Irrevocable Trust =
- Date 1 =
- Child 1 =
- Child 2 =
- Child 3 =
- Child 4 =
- \$x =
- Accountant =
- Year =
- State =
- Date 2 =

Dear :

This is in response to your letter dated July 22, 2002, requesting an extension of time, under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code, to make an allocation of Decedent's generation-skipping transfer (GST) exemption to a transfer to an irrevocable trust.

The facts and representations submitted are summarized as follows: Decedent created Irrevocable Trust on Date 1 for the benefit of her descendants.

Article Second, Paragraph A of Irrevocable Trust provides that the principal of the trust estate is to be divided into four equal shares for Decedent's children, Child 1, Child 2, Child 3 and Child 4, and each share is to be held in separate trust.

Article Second, Paragraph B(1) provides that, for a period of three years after the creation of Irrevocable Trust, the Trustee shall accumulate the income and add it to principal.

Article Second, Paragraph B(2) provides that, from the third anniversary to the fifth anniversary of the creation of Irrevocable Trust, the Trustee shall distribute fifty percent of the income of each child's trust to the child and shall accumulate the remaining income and add it to principal.

Article Second, Paragraph B(3) provides that, after the fifth anniversary of the creation of Irrevocable Trust, the Trustee shall distribute all of the income of each child's trust to the child.

Article Second, Paragraph B further provides that the Trustee shall distribute so much of the principal from each child's trust as the Trustee deems appropriate for the child's health, maintenance and comfortable support.

Article Second, Paragraph C provides that, upon the death of each child, if his or her trust is not already terminated, the principal of his or her trust shall be distributed to the child's descendants, in such proportions or amounts and subject to the trusts, terms and conditions as the child may appoint by his or her Last Will and Testament. If the child does not exercise his or her power of appointment in full, the unappointed portion of his or her trust shall be distributed to the child's then living issue, per stirpes, or, if he or she has no issue, to Decedent's then living issue, per stirpes.

On Date 1, Decedent transferred real property with an appraised value of \$x to Irrevocable Trust. Decedent hired Accountant to prepare a United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) for Year. Accountant then prepared the return on which he reported Decedent's contribution to Irrevocable Trust as a taxable gift. However, in completing the return, Accountant inadvertently failed to allocate Decedent's GST exemption to Irrevocable Trust or any of the separate trusts created thereunder for Decedent's children. Thus, the Form 709 was timely filed but no allocation of Decedent's GST exemption was made on the return.

Decedent, a resident of State, died testate on Date 2, survived by Child 1, Child 2, Child 3, Child 4, and five grandchildren. Under the terms of Decedent's Last Will and Testament, all of her property passed outright in equal shares to Child 1, Child 2, Child 3, and Child 4.

Child 1, as executor of Decedent's estate, has requested an extension of time, under § 2642(g) and § 301.9100-3, to allocate Decedent's GST exemption to Decedent's Date 1 contribution to Irrevocable Trust.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) provides that the term "generation-skipping transfer" means: (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 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 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)(1) provides that, except as provided in § 2642(f), if the allocation of 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)– (A) 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)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

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.

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 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. 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, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Child 1, as executor of Decedent's estate, is granted an extension of time of sixty (60) days from the date of this letter to make a retroactive allocation of Decedent's GST exemption with respect to Decedent's transfer to Irrevocable Trust. The allocation will be effective as of Date 1, the date of the transfer to the trust, and the gift tax value of the transfer will be used in determining the amount of GST exemption to be allocated to Irrevocable Trust. The allocation should be made on a supplemental Form 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. Copies are enclosed for this purpose.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Heather C. Maloy

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

Enclosure

Copy of letter

Copy for 6110 purposes