

**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-166481-01

Date: DECEMBER 10, 2002

Legend

Re:

|         |   |
|---------|---|
| Grantor | = |
| Spouse  | = |
| Trust   | = |
| Trust A | = |
| Trust B | = |
| Trustee | = |
| Date 1  | = |
| Date 2  | = |
| Year 1  | = |
| Date 3  | = |
| Date 4  | = |

Dear :

This letter responds to your request submitted on behalf of Trust, requesting rulings under § 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted and representations made are summarized as follows: Grantor created Trust on Date 1 and subsequently amended Trust on Date 2. Grantor transferred most of her assets to Trust. Grantor was the initial trustee of Trust. In Year 1, all the assets of Trust were transferred to Trustee, as successor trustee of Trust. Date 2 is prior to October 22, 1986. Grantor died on Date 3. At the Grantor's death, the Trust was divided into two trusts, Trust A and Trust B. Trust A was a marital trust and is funded with a pecuniary amount equal to the minimum marital deduction necessary so that there is no federal estate tax payable by reason of Grants death, after taking into account all exclusions, deductions, the unified credit and credit for taxes paid on post-1976 gifts. Trust B contains the residue of the estate.

Article Fourth, paragraph (b) of Trust provides that Spouse is entitled to all of the income from Trust A during his lifetime. Spouse also has the right to withdraw all of the principal of Trust A and has a general power of appointment over Trust A.

Article Fifth of Trust provides that Spouse is entitled to all the net income from Trust B during his life. At Spouse's death, Trust B is divided into separate, equal trusts, one trust for each of Grantor's then living children and one trust for the then living descendants of a deceased child. The trusts will terminate twenty-one years after the death of the last to die of Grantor and all other beneficiaries living at the time of Grantor's death. At termination, the trusts will be distributed to Grantor's then living descendants, per stirpes.

In 1991 Spouse transferred Grantor's one-half interest in her personal residence to trust as an agent of Grantor under a durable power of attorney in order to avoid probate. Absent the conveyance the one-half interest in the residence would have passed to trust pursuant to Article Third of Grantor's will at Grantor's death. You represent that no other additions were made to Trust from and after October 22, 1986.

A Form 706, United States Estate (and Generation-Skipping) Tax Return, was timely filed on Date 4 by Trustee of Grantor's Trust. On Schedule R, a portion of Grantor's GST exemption was allocated to Trust B. Although statements relating to Grantor's mental disability were prepared, they were not filed with the Form 706.

You have requested an extension of time under § 301.9100-3 to file the physician certification required under § 26.2601-1(b)(3)(iii)(A) of the Generation-Skipping Transfer Tax Regulations. You have represented that Grantor was under a mental disability on October 22, 1986, and at all time thereafter until her death.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i) of the Generation-Skipping Transfer Tax Regulations, if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not

there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or care of the decedent's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706, either -- (1) a certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

Section 26.2601-1(b)(5) provides that any addition to a trust made pursuant to an instrument or arrangement covered by transitions rules in paragraph (b)(1), (2) or (3) of the section is not treated as an addition for purposes of this section. Moreover, any property transferred inter vivos to a trust is not treated as an addition if the same property would have been added to the trust pursuant to an instrument covered by the transition rules in paragraph (b)(2) or (3) of this section.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides 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.

Based on the facts submitted and the representations made, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Therefore, Trustee is granted an extension of time of 60 days from the date of this letter to file the required physician certification.

Except as ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

Specifically, we express no opinion as to whether the Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986.

Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

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

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 physician's certification should be made on a supplemental 706 United States Estate (and Generation-Skipping Transfer) Tax Return and 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 6110 purposes  
Copy of this letter