

Internal Revenue Service

Department of the Treasury

Number: **200333019**

Release Date: 8/15/2003

Index Number: 2642.00-00; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-101217-03

Date:

May 6, 2003

Re: Private Letter Ruling

LEGEND

Decedent =

Irrevocable Trust =

Date 1 =

Daughter =

Son-in-law =

Grandchildren =

Date 2 =

\$a =

Accountant =

Year 1 =

Date 3 =

\$b =

Year 2 =

Date 4 =

Husband =

Inter Vivos QTIP Trust =

Date 5 =

\$c =

Date 6 =

Date 7 =

\$d =

\$e =

Dear :

This is in response to your letter dated December 11, 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 Daughter.

Article II, paragraph A of Irrevocable Trust provides that the trustee shall pay all or any part of the net income of the trust annually, or in the trustee's discretion at more frequent intervals, to or for the benefit of Daughter during her lifetime.

Article II, paragraph B provides, in part, that upon Daughter's death, the trustee shall distribute all of the net income to a class of individuals consisting of Son-in-law and Grandchildren in such amounts and proportions as the trustee, in the trustee's absolute discretion, shall determine.

Article II, paragraph C provides, in part, that the trustee shall also pay to or apply to or for the use of Daughter, and after her death to a class of individuals consisting of Son-in-law and Grandchildren, so much or all of the principal of the trust as the trustee, in the trustee's absolute discretion, may deem advisable for their support, education, health and maintenance.

On Date 2, Decedent transferred securities with a value of \$a to Irrevocable Trust. Decedent hired Accountant to prepare a United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) for Year 1. In completing the return, Accountant reported Decedent's contribution to Irrevocable Trust as a taxable gift but failed to allocate any of Decedent's GST exemption to Irrevocable Trust. Thus, the Form 709 was timely filed but no allocation of Decedent's GST exemption was made on the return.

On Date 3, Decedent gifted securities valued at \$b to Irrevocable Trust. At the time of the gift, Decedent relied on Accountant for tax planning advice relating to gifts made to Irrevocable Trust. Accountant failed to advise Decedent of the necessity for filing a Form 709 for Year 2. Consequently, Decedent did not file a Form 709 for Year 2

to report the Date 3 gift to Irrevocable Trust or to allocate GST exemption to Irrevocable Trust.

On Date 4, Husband created Inter Vivos QTIP Trust. On Date 5, Husband gifted municipal bonds valued at \$c to Inter Vivos QTIP Trust. The gift was reported on a timely filed Form 709 and qualified terminable interest property (QTIP) treatment was elected for the gift.

Article I, paragraph A of Inter Vivos QTIP Trust provides that during Decedent's lifetime, the trustee shall pay all the net income to Decedent in not less often than annual installments.

Article I, paragraph B provides that during Decedent's lifetime, the trustee may pay to Decedent such sums of principal as the trustee deems necessary or advisable for Decedent's health, support and maintenance, considering Decedent's income and readily marketable assets known to the trustee.

Article I, paragraph E provides that upon Decedent's death, the remaining principal shall be distributed in accordance with Article II of Inter Vivos QTIP Trust.

Article II provides that the balance of the trust estate remaining at the time of Decedent's death shall be divided into two shares for purposes of the generation-skipping transfer tax. The first share, known as the "Exempt Share," shall be an amount equal to Decedent's GST exemption remaining at the time of Decedent's death. The second share, known as the "Non-Exempt Share," shall consist of the balance of the trust residue.

Decedent died testate on Date 6, survived by Husband, Daughter, Son-in-law and Grandchildren.

Decedent's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) was filed on or about Date 7. On the Form 706, the executor of Decedent's estate allocated \$d of Decedent's GST exemption to Inter Vivos QTIP Trust.

Decedent's estate now requests an extension of time under § 2642(g) and § 301.9100-3, to allocate Decedent's GST exemption to Decedent's Date 2 and Date 3 transfers to Irrevocable Trust using the value of the gifts at the time the gifts were made. In addition, Decedent's estate requests and extension of time to allocate additional GST exemption to Inter Vivos QTIP 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, Decedent's estate is granted an extension of time of sixty (60) days from the date of this letter to make retroactive allocations of Decedent's available GST exemption as follows: \$a to her Date 2 transfer to Irrevocable Trust and \$b to her Date 3 transfer to Irrevocable Trust. The allocations should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. Copies are enclosed for this purpose.

In addition, when Decedent died, the value of the Inter Vivos QTIP Trust was includible in her estate under § 2044(a). The terms of Inter Vivos QTIP Trust call for it to be divided into two separate shares, and one of the shares is to be equal to the amount of Decedent's GST exemption at the time of her death. Therefore, in this case, Decedent's estate is granted an extension of time of sixty (60) days from the date of this letter to allocate an additional \$e of GST exemption to Inter Vivos QTIP Trust. This allocation should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is 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) of the Code provides that it may not be used or cited as precedent.

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,

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures

Copy of letter

Copy for 6110 purposes