

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-140811-02
Date:

MAY 23, 2003

Re:

LEGEND:

Decedent =
Son =
Granddaughter =
Grandson =
Trust =

Date 1 =
Date 2 =
x =
y =

Dear :

This is in response to a letter from your authorized representative dated July 18, 2002, requesting a ruling regarding the allocation of Decedent's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows. Decedent died testate on Date 1. Under Item Two of Decedent's will, all of Decedent's personal property passes outright to Son; under Item Three the residue of Decedent's estate passes to Trust. Item Three provides that the trustees may accumulate the income in Trust or may, in their discretion, distribute any part or all of the net income and principal to and among Son and his lineal descendants as the trustees determine necessary for each person's health, maintenance, education, and support. Decedent has two grandchildren, Granddaughter and Grandson. You represent that the residue of Decedent's estate that is to be transferred to Trust is \$x.

Decedent's estate filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return on Date 2. Schedule R attached to Decedent's Form 706 did not allocate Decedent's unused GST exemption. You represent that

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Decedent's unused GST exemption on the date of Decedent's death was \$y. You have asked us to rule that Decedent's unused GST exemption is automatically allocated to Trust.

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

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess 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 the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust (or involved in the 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her 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 2632(e)(1) (designated as § 2632(c)(1) at the time of Decedent's death) provides that, in general, any portion of an individual's GST exemption that has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows –

(A) first, to property that is the subject of a direct skip occurring at the individual's death, and

(B) second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. The regulation also supplies the method for the automatic allocation of any unused GST exemption. First, the exemption is allocated pro rata to direct skips on the basis of their values for estate tax purposes. The balance

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is then allocated pro rata, on the basis of estate tax values, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. No automatic allocation is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. The automatic allocation is irrevocable.

Because no allocation was made on Decedent's Form 706, Decedent's remaining GST exemption is allocated automatically in accordance with § 2632(e) (designated as § 2632(c) at the time of Decedent's death) and § 26.2632-1(d)(2). Based on the facts and representations, there is no property that is the subject of a direct skip occurring at Decedent's death. Therefore, based on the above, we conclude that Decedent's remaining GST exemption is allocated automatically to Trust.

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

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: