

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Ruling Request

Refer Reply To:

CC:PSI:9 – PLR-143434-03

Date:

January 23, 2004

LEGEND:

Trust =

Decedent =

Accounting Firm =

University =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

d =

e =

Dear Sir:

This is in response to your letter dated July 21, 2003, and subsequent correspondence, requesting, on behalf of Decedent's estate, an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make allocations of Decedent's generation-skipping transfer (GST) tax exemption to Decedent's lifetime transfers to a trust.

A summary of the facts and representations submitted are as follows. Decedent died on Date 1, survived by two children. Prior to his death, on Date 2, Decedent created an irrevocable trust (Trust) which he funded with \$a. No Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, was filed reporting the gift to the Trust.

Article I.01 of the Trust provides that the trust estate is to be divided into two separate equal shares, one for each of Decedent's two children.

With respect to each child's share, Article 1.02(A) provides that the trustee may make discretionary distributions of income and principal to the child for whom the share was established and the child's lineal descendants as is necessary to provide for their health, education, support, maintenance, comfort, and/or welfare. There is no requirement to equalize distributions among beneficiaries and trust income not distributed is to be added to principal.

Article 1.02(B) provides that, in the event either child and his or her lineal descendants die prior to the Trust's termination, principal and accrued and/or undistributed income remaining in the child's trust share is to be added to his or her sibling's trust share and administered in accordance with the terms of the Trust.

Article 1.03 provides that the Trust will terminate upon the earlier of (i) the death of both of Decedent's children and their lineal descendants, or (ii) the date that immediately proceeds 21 years after the death of the survivor of Decedent's two children. Upon termination, the trustee is to distribute the principal and income of each trust share, together with any accrued and/or undistributed income to the lineal descendants of the child for whom the trust share was established, in equal shares, per stirpes, if any; if none, to the lineal descendants of the child's sibling, in equal shares, per stirpes; if any; if none, to University.

On Date 3, Decedent transferred \$b to the Trust. Decedent retained Accounting Firm to prepare his Form 709. In preparing Decedent's Form 709, an accountant at Accounting Firm, failed to effectively allocate Decedent's GST exemption to the Date 3 transfer to the Trust.

On Date 4, Decedent transferred \$c to the Trust. Decedent retained Accounting Firm to prepare his Form 709. In preparing Decedent's Form 709, an accountant at Accounting Firm failed to effectively allocate Decedent's GST exemption to the Date 4 gift to the Trust.

On Date 5, Decedent transferred \$d to the Trust. Decedent retained Accounting Firm to prepare his Form 709. In preparing Decedent's Form 709, an accountant at Accounting Firm failed to effectively allocate Decedent's GST exemption to the Date 5 gift to the Trust.

On Date 6, Decedent transferred \$e to the Trust. Decedent retained Accounting Firm to prepare his Form 709. An accountant at Accounting Firm failed to effectively allocate Decedent's GST exemption to the Date 6 transfer to the Trust.

Decedent's estate has requested an extension of time under §§ 2642(g) and 301.9100-3 to allocate Decedent's GST exemption to his transfers to the Trust on Dates 2, 3, 4, 5, and 6 and that such allocations be made based on the value of the property transferred to the Trust as of Dates 2, 3, 4, 5, and 6, respectively.

LAW and ANALYSIS:

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 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 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

As applicable during the year at issue, § 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the 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 § 2642(g)(1).

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. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2624(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.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 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.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). 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) 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 allocations of Decedent's available GST exemption to Decedent's transfers to the Trust on Dates 2, 3, 4, 5, and 6, respectively. The allocations, once made, will be effective as of the date of the transfers to the Trust, and the gift tax value of the transfers to the Trust will be used in determining the amount of GST exemption to be allocated to the Trust.

The allocation for each date at issue should be made on a separate supplemental Form 709, United States Gift (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 each 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(s) 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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding the value of the property Decedent transferred to the Trust for federal transfer tax purposes.

In accordance with 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.

Sincerely,

Heather C. Maloy

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

Enclosures: Copy for section 6110 purposes
Five copies of this letter

Cc: