

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-154333-04

Date: SEPTEMBER 20, 2005

Re:

Legend

Taxpayer =

Trust =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

x =

Law Firm =

Partner =

Accountant 1 =

Accountant 2 =

Dear _____ :

This is in response to your letter dated October 1, 2004, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption under § 2642(g) of the Internal Revenue Code.

According to the facts submitted, Taxpayer met with Partner of Law Firm concerning Taxpayer's estate planning at which the creation of a GST exempt trust was discussed. On Date 1 in Year 1, Taxpayer created Trust for the benefit of his spouse, children and descendants. On Date 2, Taxpayer transferred x to Trust. It is represented that Partner believed Accountant 1 was to prepare Taxpayer's Year 1

federal gift tax return, Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and allocate Taxpayer's GST exemption to the transfer to Trust. In Year 2, Accountant 2 discovered that Accountant 1 had inadvertently failed to prepare Taxpayer's federal gift tax return and, therefore, Taxpayer's GST exemption had not been allocated to Trust.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a), as in effect for decedents dying before December 31, 2003, provides that, for purposes of determining the GST tax, 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 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 is made on Form 709.

Section 2642(b)(1) provides 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) 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)).

Section 2642(g)(1)(A) provides 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 under § 2642(g)(1), 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, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

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 Internal Revenue Code except subtitles E, G, H, and I.

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 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). 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to allocate his available GST exemption to Trust. The allocation will be effective as of Date 2 and the gift tax value of the transfer to Trust will be used in determining the inclusion ratio with respect to Trust.

The allocation of Taxpayer's GST exemption should be made on a Form 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 709. This ruling does not extend the time to file the Form 709.

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

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: