

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

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Date:
June 23, 2009

Grandparent =
Child =
Grandchild =
Company =
Trustee =
Trust =
Date 1 =
Date 2 =
Date 3 =
x =

Dear :

This letter responds to your request, on behalf of Trust, for a ruling on the application of section 6166 of the Internal Revenue Code with respect to the generation-skipping transfer (“GST”) tax imposed upon a taxable termination.

On Date 1, Grandparent irrevocably created Trust for the benefit of his child (Child). Grandparent transferred stock in Company, a closely held business, to Trust. Trust is intended to meet the requirements of a qualified subchapter S trust under section 1361(d)(3).

Under Article Sixth, Paragraph 6.2.2 of Trust, the trust assets are to be distributed outright to Child on Child attaining age x. Under Paragraph 6.2.4, if Child dies before attaining age x, then Child is granted a general power of appointment over a portion of the trust assets determined under a formula provided in Article Seven, Paragraph 7.9.3 of the Trust. The portion of the Trust that, under the formula, is not subject to Child’s general power is to be held in further trust for the benefit of Child’s then living issue per stirpes and distributed to such issue on attaining age 21.

Child died on Date 3, before attaining age x. Child was survived by his minor child, Grandchild. Based on the information submitted, under the formula contained in Article Seven, Paragraph 7.9.3, no portion of the Trust assets became subject to the

general power of appointment granted to Child under Article Sixth, Paragraph 6.2.2. Therefore, no portion of the Trust assets was subject to inclusion in Child's gross estate, and pursuant to Article Sixth, Paragraph 6.2.4, the Trust assets passed in further trust for the benefit of Grandchild.

You have asked us to rule that an election may be made under section 6166 to extend the time for the payment of the GST tax imposed on Child's death as a result of the termination of Child's interest in Trust.

Section 2001 of the Code imposes an estate tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" (defined in section 2652) to a "skip person" (defined in section 2613). Section 2603(a) provides that, in the case of a taxable distribution defined in section 2612(b), the tax imposed by section 2601 shall be paid by the transferee. In the case of a taxable termination (defined in section 2612(a)) or a direct skip (defined in section 2612(c)) from a trust, the tax shall be paid by the trustee. In the case of a direct skip (other than a direct skip from a trust), the tax shall be paid by the transferor.

Section 2611(a) provides that the term "generation-skipping transfer" means a taxable distribution, a taxable termination, or a direct skip. Section 2612(a) provides, in part, that the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless (A) immediately after the termination, a non-skip person has an interest in the property, or (B) at no time after the termination may a distribution (including distribution on termination) be made from the trust to a skip person. Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person (other than a taxable termination or a direct skip). Section 2612(c)(1) provides that a direct skip is a transfer subject to a tax imposed by chapter 11 (estate tax) or chapter 12 (gift tax) of an interest in property to a skip person.

Section 2613(a) provides that the term "skip person" means (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust if all the interests in the trust are held by skip persons.

Section 2622 provides that the taxable amount in case of taxable termination shall be the value of all property with respect to which the taxable termination has occurred, reduced by a deduction similar to the deduction allowed by section 2053 (relating to expenses, indebtedness, and taxes) for amounts attributable to the property with respect to which the taxable termination has occurred.

Under section 2651(b), an individual who is a lineal descendant of a grandparent of the transferor is to be assigned to the generation that results from comparing the number of

generations between the grandparent and the individual with the number of generations between the grandparent and the transferor.

Section 2652(a) provides, in part, that the term “transferor” means, in the case of any property subject to the estate tax, the decedent, and in the case of any property subject to gift tax, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2661(2), provides that insofar as applicable and not inconsistent with the provisions of chapter 13, in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, all provisions of subtitle F, including penalties, (i.e., sections 6001-7874) applicable to the estate tax, to chapter 11, or to section 2001 are applicable in respect of the generation-skipping transfer tax, chapter 13, or section 2601, as the case may be.

Under section 6166(a)(1), if the value of an interest in a closely held business included in determining the gross estate of a decedent exceeds 35 percent of the “adjusted gross estate”, the executor of the estate may elect to pay part or all of the tax imposed by section 2001 in two or more (but not exceeding 10) equal installments. Generally, under section 6166(a)(2), the amount tax that may be paid in installments is limited to the amount that bears the same ratio to the estate tax imposed under section 2001, as the closely held business bears to the amount of the adjusted gross estate.

Section 6166(i) provides as follows:

Special Rule for Certain Direct Skips. - To the extent an interest in a closely held business is the subject of a direct skip (within the meaning of section 2612(c)) occurring at the same time as and as a result of a decedent's death, then for purposes of this section any tax imposed by section 2601 on the transfer of the interest is treated as if it were additional tax imposed by section 2001.

In the present case, a taxable termination within the meaning of section 2612(a) occurred on Child's death with respect to the Trust assets. The taxable termination results in the imposition of the GST tax. The question presented is whether the GST tax imposed as a result of the taxable termination is eligible to be paid in installments under section 6166. As discussed below, we conclude that the GST tax imposed on the taxable termination presented in this case is not eligible to be paid in installments under section 6166.

As noted above, section 2661(2) provides that the provisions of Subtitle F of the Code (which includes section 6166) apply in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, “insofar as applicable and not inconsistent with the provisions of chapter 13.”

Section 6166 allows a decedent's estate to elect to defer payment of the federal estate

tax generated by a closely held business interest that is includible in the decedent's gross estate. In order to qualify for the deferral, the value of the business interest must be included in the gross estate. Further, the value of the business interest must exceed 35 percent of the "adjusted gross estate", defined in section 6166(b)(6) as the gross estate less amounts allowable as a deduction under section 2053 or section 2054. Under section 6166(a)(2), the amount of tax that may be deferred is determined based on the relative values of the business interest and the adjusted gross estate.

Under these provisions, the estate's eligibility for the deferral, as well as the amount of tax that may be deferred, is dependent on the inclusion of the property in the gross estate, and the size of the adjusted gross estate, which in turn is dependent on the amount of estate administration expenses, claims, etc. In contrast, the amount of the GST tax is dependent on the "taxable amount", i.e., the value of the property subject to the taxable termination less the deductions allowed as provided in section 2622. The elements involved in this calculation are different from those used under section 6166 to determine the eligibility for section 6166, i.e., the gross estate and the adjusted gross estate. In view of the statutory requirements contained in section 6166, that section would not otherwise be applicable to, or consistent with, the provisions of the GST tax imposed upon a taxable termination. Section 2661(2), therefore, does not provide a basis for making a section 6166 election in connection with a taxable termination.

Section 6166(i), however, applies section 6166 to the GST tax imposed on direct skips occurring on the death of a transferor. Such transfers, by definition, constitute property that is also included in the transferor/decedent's gross estate. If the estate meets the threshold requirements for the section 6166 election, then the GST tax imposed on the transfer is treated as additional estate tax that is also eligible for deferral. Thus, section 6166(i), by treating the GST tax imposed on a testamentary direct skip as an additional estate tax, makes section 6166 applicable to the GST tax imposed on testamentary direct skips and provides the mechanism to apply section 6166 to the tax. In the absence of any similar provision with respect to the GST tax imposed on the taxable termination at issue in the present case, section 6166 does not provide a basis for making a section 6166 election in connection with a taxable termination.¹ Accordingly, an election may not be made under section 6166 to extend the time for payment of the GST tax imposed on Child's death as a result of the taxable termination that occurred on Child's death.

This position, that the section 6166 election is applicable only to direct skips resulting at the death of an individual, is supported by the legislative history underlying the enactment of the GST tax provisions including section 2661(2) and section 6166(i), as follows:

The bill also includes several provisions coordinating the generation-

¹ Compare section 303(d) containing detailed rules specifically applying the section 303 redemption provisions to the GST tax imposed with respect to all GST transfers occurring as a result of the death of an individual.

skipping transfer tax with the gift and estate taxes. The Code provisions governing administration of the gift and estate taxes also apply to the amended generation-skipping transfer tax. Estate tax rules apply to generation-skipping transfers occurring as a result of death, and gift tax rules apply in other cases.

* * * * *

The special rules under which estate tax attributable to interests in certain closely held businesses may be paid in installments also apply to direct skips occurring as a result of death.

(emphasis added) H.R. Rep. No. 426, 99th Cong., 1st Sess. 827-828 (December 7, 1985).

We conclude that the GST tax imposed on the taxable termination in the present case is not eligible to be paid in installments under section 6166.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is 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,

Gerald R. Ryan
Senior Technician Reviewer, Branch 3
(Procedure & Administration)

cc: