

## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

Number: **201010005**

Release Date: 3/12/2010

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Index Number: 2642.00-00, 9100.00-00,  
9100.22-00

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-126839-09

Date:

November 6, 2009

### Legend

Decedent =

Executrix =

Son =

Daughter =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Year 3 =

Trust A =

Trust B =

Partnership A =

Partnership B =

Accounting =

Firm =

Appraiser =

C% =

\$D =

\$E =

\$F =

\$G =

\$H =

\$I =

\$J =

\$K =

City =

Dear \_\_\_\_\_ :

This responds to your letter dated May 22, 2009 requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping transfer (GST) exemption to the transfers made to Trust A and Trust B.

### Facts

On Date 1, in Year 1, Decedent created an irrevocable trust (Trust A) for the benefit of Son, Son's wife, and Son's issue and funded it with a C% limited partnership interest in Partnership A. Trust A has GST potential. Partnership A is a management company and the general partner of a limited partnership formed to acquire, hold, improve, operate, lease, mortgage, assign, and dispose of a parcel of real property located in City.

Decedent retained Accounting Firm to prepare his Form 709, United States Gift (and Generation Skipping Transfer) tax return for Year 1. Decedent also retained Appraiser to value the gift of the C% limited partnership interest in Partnership A. Accounting Firm reported the value of the gift on Decedent's Form 709 as \$D and did not allocate Decedent's GST exemption to the gift.

On Date 2, in Year 2, Decedent established an irrevocable trust for the benefit of Daughter and her issue (Trust B). Trust B has GST potential. Decedent funded Trust B with a C% limited partnership interest in Partnership B on Date 3, in Year 2. The assets of Partnership B consist of several limited partnership interests, including a C% limited partnership interest in Partnership A.

Decedent again retained Accounting Firm to prepare his Form 709 for Year 2 and Appraiser to value the C% interest in Partnership B on Date 3. On Decedent's Form 709 for Year 2, Accounting Firm reported the value of the C% limited partnership interest in Partnership B on Date 3 was \$D and again failed to allocate Decedent's GST exemption to the gift.

In Year 3, the Service audited Decedent's Forms 709 for Years 1 and 2. The Service determined that the Date 1 value of the C% limited partnership interest in Partnership A was \$F and that the Date 3 value of the C% limited partnership interest in Partnership B was \$G. Decedent agreed to the adjustments. The total of \$F plus \$G is less than \$1,000,000.

Decedent died on Date 4. Executrix allocated \$H of Decedent's available GST exemption on Form 706, United States Estate (and Generation-Skipping Transfer) tax return, to testamentary trusts established under Decedent's will for his grandchildren, who are skip persons as defined under section 2613. After filing the Form 706,

Executrix discovered Accounting Firm's failure to allocate Decedent's GST exemption to the Date 1 transfer to Trust A and the Date 3 transfer to Trust B.

Executrix represents that to date no taxable distributions, taxable terminations, or any other GST taxable events have occurred with respect to either Trust A or Trust B that would result in a GST tax liability on the part of any of Trust A, Trust B, or the beneficiaries of each trust. Executrix also represents that no additions have been made to Trust A since Date 1 and to Trust B since Date 3. At the time Decedent transferred the partnership interests to Trusts A and B, Executrix represents that Decedent had not previously allocated any portion of his GST exemption.

Executrix is requesting an extension of time under § 2642(g) and § 301.9100-3 to allocate \$J of Decedent's \$I of remaining GST exemption to the Date 1 transfer to Trust A and \$K of the Decedent's \$I of remaining GST exemption to the Date 3 transfer to Trust B. Dates 1 and 3 are prior to December 21, 2000.

### Law and Analysis

Section 2601 imposes a tax on every GST. A GST 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 GST 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. Section 2642(a) provides the method for determining the inclusion ratio.

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 GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), in effect at the time of the transfer, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. In the case of transfers after December 31, 2003, the GST exemption is equal to the applicable exclusion amount under § 2010(c). 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)(4)(i) 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 26.2632-1(d)(1) provides generally that after decedent's death, an allocation of decedent's unused GST exemption is made by the executor on Form 706.

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, the value of such property for purposes of determining the inclusion ratio under § 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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

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. 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.

Notice 2001-50, 2001-2 C.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 GST 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, Executrix is granted an extension of time of sixty (60) days from the date of this letter to allocate \$J of Decedent's \$I of available GST exemption to the Date 1 transfer to Trust A and \$K of Decedent's \$I of available GST exemption to the Date 3 transfer to Trust B. The allocations will be effective as of the date of transfers to the trusts, and the gift tax values of the transfers to the trusts will be used in determining the inclusion ratio with respect to each trust.

The allocations should be made on Supplemental Forms 709 for Year 1 and Year 2 filed with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Supplemental Form. Two copies of this letter are enclosed for this purpose.

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.

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 representatives.

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,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes  
Two copies of this letter

cc: