

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-109552-11

Date:

September 1, 2011

Trust	=
Date	=
Taxpayer	=
Taxpayer's Wife	=
Year 1	=
Year 2	=
<u>x</u>	=
Attorney	=
Accountant	=
Law Firm	=

Dear :

This letter responds to your letter dated March 2, 2011, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to a transfer to Trust.

Facts

On Date, Taxpayer created Trust, an irrevocable trust, for the benefit of Taxpayer's Wife, children and grandchildren. In the same year, Year 1, Taxpayer transferred to Trust certain tangible property and cash having an aggregate value of \$x.

Attorney drafted Trust and, in written correspondence, advised Taxpayer of the application of the GST tax to future distributions from Trust unless GST exemption was allocated to any transfer to Trust. Attorney provided a copy of the correspondence to

Accountant, who was preparing Taxpayer's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1.

Taxpayer relied on Accountant to report the Year 1 transfer accurately and to allocate appropriately Taxpayer's GST exemption to the transfer. Although Taxpayer's timely-filed Form 709 properly reported the transfer for Year 1, Accountant failed to allocate GST exemption to the transfer.

In Year 2, Taxpayer hired new legal counsel (Law Firm). Law Firm alerted Taxpayer that GST exemption had not been allocated to Taxpayer's transfer in Year 1. Taxpayer requests an extension of time to allocate his available GST exemption to his transfer to Trust in Year 1. Taxpayer requests that such allocation be based on the value of the property transferred to the Trust on the date of transfer.

Law and Analysis

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 the 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 (if any) 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 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), as effective in the year at issue, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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 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 § 2642(g).

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 under this paragraph, the time for making the allocation (or election) 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 generation-skipping transfer 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 the 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.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 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 the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), 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. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter in which to allocate his available GST exemption to his transfer to Trust in Year 1. The allocation of Taxpayer's GST exemption will be effective as of the date of the transfer to Trust, and the value of the transfer for gift tax purposes will be used in determining the amount of GST exemption to be allocated.

The allocation should be made on a supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy of this letter is 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 taxpayers 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.

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 ruling, it is subject to verification on examination.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes (1)
Copy of this letter (1)