

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201406008**  
Release Date: 2/7/2014

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 2601.00-00, 2601.04-00,  
2601.04-05, 9100.00-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-133237-13  
Date:  
October 21, 2013

RE:

Legend

Decedent =

Estate =

Trust =

Trustee =

Niece =

Nephew =

Cousin =

Nephew's Wife =

Nephew's Daughter =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear :

This letter responds to the letter dated July 24, 2013, submitted by your authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file, pursuant to § 26.2601-1(b)(3)(iii)(A) of the Generation-Skipping Transfer Tax Regulations, a qualified physician's certification and other evidence that Decedent was mentally incompetent at all times on and after October 22, 1986 until her death.

The facts submitted and representations made are summarized as follows:

Decedent created a revocable trust (Trust) on Date 1 and subsequently amended it on Date 2, a date prior to October 22, 1986. Decedent died on Date 3. Upon the death of Decedent, the remainder of Trust was split into two equal shares and held in further trust. The first share was for the benefit of Decedent's niece (Niece) and the second share was for the benefit of Decedent's nephew (Nephew).

On the death of Niece, the remainder of the first share is to be paid to the grandchildren of Decedent's cousin (Cousin). Niece is still living.

On the death of Nephew, the income of second share was to be paid to his wife (Nephew's Wife) for her lifetime, then to his daughter (Nephew's Daughter) for her lifetime. Nephew died on Date 4. Nephew's Wife renounced her interest on Date 5 and Nephew's Daughter died on Date 6. Upon the death of the last to die of Nephew, Nephew's Wife, and Nephew's Daughter, the remainder of the second share is to continue on in perpetuity for the benefit of two tax exempt entities.

The executor of Decedent's Estate timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return on Date 7. Decedent's Estate failed to file a physician's certificate or other evidence of Decedent's mental incompetency.

Section 2601 of the Internal Revenue Code 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.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i), if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the individual's property, whether or not there was an adjudication of incompetence and regardless of whether there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the individual or care of the individual's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if there has not been a court adjudication that the decedent was mentally incompetent on or before October 22, 1986, the executor must file, with Form 706, either - (1) a certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician, and any judgment or decree relating to the decedent's incompetency that was made after October 22, 1986.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). 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.

Based on the facts submitted and the representations made (including a contemporaneous statement made regarding Decedent's mental incompetency during the applicable time period), we conclude that the requirements of § 301.9100-3 have been met. Therefore, we grant an extension of time of 120 days from the date of this letter to file the required physician's certification or other evidence. The physician's certification or other evidence should be attached to a supplemental Form 706 for Decedent's Estate. The Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82,

Cincinnati, OH 45999. A copy of this letter should also be attached to the supplemental Form 706. 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. Specifically, we express no opinion as to whether Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: