

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09
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Date:
March 25, 2005

LEGEND

Decedent	=
Trust	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
\$ <u>a</u>	=

Dear :

This letter responds to the letter submitted by the estate's representative dated November 19, 2004, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Decedent's generation-skipping transfer (GST) tax exemption.

FACTS

The information submitted states that in Year 1, Decedent established Trust. Trust provides that distributions will be made to beneficiaries who are skip persons within the meaning of § 2613(a). Decedent transferred \$a to Trust in each of Year 1, Year 2, and Year 3. Decedent's tax advisor inadvertently failed to advise Decedent to file Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1 and Year 2 in order to allocate Decedent's GST tax exemption to the transfers made to Trust in those years. Decedent's unused GST exemption was automatically allocated to the transfer to Trust in Year 3 under § 2632(c)(1). Decedent died in Year 4.

Decedent's estate now requests an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of Decedent's GST exemption to the transfers to Trust in Year 1 and Year 2, effective as of the dates of the original transfers.

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 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST tax 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 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption will be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. The term "indirect skip" means any transfer of property (other than a direct skip) subject to gift tax that is made to a GST trust. Section 2632(c)(3)(A). With certain exceptions, a GST trust is a trust that could have a GST with respect to the transferor. Section 2632(c)(3)(B). Section 2632(c) applies to transfers subject to chapter 11 or 12 made after December 31, 2000.

Section 2642(g)(1)(A) provides, generally, 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 tax 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 this paragraph, 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 tax 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 six months

except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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.

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 to 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, Decedent's estate is granted an extension of time of 60 days from the date of this letter to allocate Decedent's GST exemption to the transfers made to Trust in Year 1 and Year 2. The allocations will be effective as of the dates of the transfers, and the value of the transfers for gift tax purposes will be used in determining the amount of GST tax exemption to be allocated. The allocations of Decedent's GST exemption should be made on Forms 709 and filed with the Cincinnati Service Center at Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. Copies of this letter should be attached to each Form 709. Copies 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) 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 the authorized representatives listed below.

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,

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

cc: