

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4 - PLR-103319-03
Date:
JANUARY 31, 2003

Re:

LEGEND:

- Decedent -
- W -
- Trust -

- Date 1 -
- Date 2 -
- Year 1 -
- Year 2 -
- Year 3 -
- Year 4 -
- Year 5 -
- Year 6 -
- Year 7 -
- Year 8 -
- \$m -
- \$n -
- \$o -
- \$p -
- \$q -
- \$r -
- State -
- Attorney 1 -
- Attorney 2 -
- Accountant -

Dear :

This is in response to your letter dated October 7, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's and W's GST exemption to transfers to Trust.

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The facts and representations submitted are summarized as follows:

In Year 1, Decedent established Trust, an irrevocable trust, for the benefit of Decedent's children and grandchildren. Decedent initially funded Trust with \$m and all of Decedent's rights and interests in three life insurance policies, totaling \$n in value.

Item II, Paragraph (a) of Trust provides that during the trustor's lifetime, the trustee shall hold and manage the trust property and shall accumulate any income received therefrom and add the same to trust principal.

Item III, Paragraph (a) provides that after the trustor's death, the trustee shall collect the insurance proceeds, death benefits and other property payable to Trust by reason of the trustor's death.

Item III, Paragraph (c) provides that the trustee shall divide the remainder of the trust property into as many separate and equal shares as descendants living, being one share each for each such descendant, and each such trust shall be distributed, or retained in trust, as set forth under the terms of Trust.

Item III, Paragraph (g) provides that should any descendant die after the division of the property into separate trusts but before he or she has become entitled to receive all of his or her trust, then the trust of such descendant shall be distributed, per stirpes, among the then surviving children of such descendant, if any, and if none, shall be added equally to the trust shares originally set apart for the trustor's other descendants and be held and distributed in all respects as if it had originally been a part of such other shares.

Item III, Paragraph (h) provides that if at any time before the final distribution of Trust all of the beneficiaries herein named or described should die and there should be no such beneficiary to take the property or the income therefrom, then the property remaining in the trust shall be distributed among the person who should have been entitled thereto under the laws of State if Decedent had died intestate at the time owning such property in fee simple.

Item VII, Paragraph (a) provides that after each direct or indirect transfer to Trust which is treated as a gift for federal gift tax law, each living descendant of the trustor shall have the absolute right and power to withdraw from Trust an amount equal to the lesser of (i) \$5,000 minus the total of the amounts which were subject to the withdrawal right of such descendant in connection with previous transfers to Trust during the same calendar year, or (ii) the amount of such transfer divided by the number of my then living descendants.

In Year 2 and Year 3, respectively, Decedent transferred insurance policies and cash in the sum of \$o to Trust. In Year 4, Decedent transferred \$p to Trust. In Years 5

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through Year 7, respectively, Decedent transferred insurance policies and cash in the sum of \$q to trust. In Year 8, Decedent transferred \$r to Trust.

Decedent died on Date 2.

Decedent established Trust at the suggestion of his insurance agent and Attorney 1. Attorney 1 did not advise Decedent and W of the generation-skipping transfer tax laws.

For over thirty years prior to Decedent's death, Decedent engaged Accountant to prepare and file Decedent's and W's federal income tax returns. After Decedent formed Trust, Accountant was engaged to prepare and file Decedent's gift tax returns for Year 1 through Year 8.

For each tax year from Year 1 through Year 4, Accountant prepared Form 709-A (United States Short Form Gift Tax Return) for Decedent, reporting Decedent's respective transfers to Trust.

For each tax year from Year 5 through Year 8, Accountant prepared Form 709 (United States Gift (& Generation-Skipping Transfer) Tax Return) for Decedent and W, reporting Decedent's respective transfers to Trust and W's consent to treat the transfers as made half by Decedent and half by W under § 2513 of the Internal Revenue Code.

No Notice of Allocation of GST exemption was filed on the gift tax returns for Years 1 through 8. Accountant mistakenly believed that the \$1,000,000 GST exemption was an exclusion per grandchild and that it was not necessary to allocate the GST exemption on the gift tax returns.

During the administration of Decedent's estate, Attorney 2 reviewed the trust instrument and Decedent's and W's gift tax returns and discovered that no GST exemption had been allocated to Trust in Year 1 through Year 8.

You have requested the following rulings: (1) that the Service grant an extension of time under section 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Decedent's and W's GST exemption to the Years 1 through 8 transfers to Trust; and (2) that such allocations are to be made based upon the value of the transferred assets to Trust as of the dates of the original transfers.

Section 2501(a) imposes a tax on the transfer of property by gift during each calendar year by any individual.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the donor's spouse shall, for purposes of chapter 12, be considered as made one-half by the donor and one-half by the donor's spouse, but only if at the time of the gift

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each spouse is a citizen or resident of the United States. Section 2513(a)(2) provides that “split gift” treatment under § 2513(a)(1) shall apply only if both spouses have signified their consent to the application of § 2513(a)(1) in the case of all such gifts made during the calendar year by either spouse.

Section 2601 imposes a tax on every generation-skipping transfer (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 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.

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

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST 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 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)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor’s lifetime, other than in a direct skip, is made on Form 709.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the individual’s spouse, then such gift shall be so treated for GST tax purposes.

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 or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of

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§ 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period. Such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

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 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, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

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 Internal Revenue 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. Notice 2001-50, 2001-34 I.R.B.189, 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.

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) 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.

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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, Decedent's representative and W are granted an extension of time of 60 days from the date of this letter to make allocations of Decedent's and W's available GST exemption, with respect to Decedent's transfers to Trust during Year 1 through Year 8. The allocations, once made, will be effective as of the date of the transfers to Trust, and the gift tax value of the transfers to Trust for purposes of determining the amount of GST exemption to be allocated to Trust, shall be its value as finally determined for purposes of chapter 12. This election should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. Copies of this letter are enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter under the cited provisions or under any other provisions of the Code.

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 the office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copies of this letter