

On Date 1 in Year 1, Taxpayer established QPRT, an irrevocable trust, for the benefit of her child, Child. The trustee of QPRT is Taxpayer. Taxpayer transferred a one-half interest in X, her residence, to QPRT on Date 1.

Pursuant to the terms of QPRT, X is to be held for the exclusive benefit of Taxpayer for a years (trust term). Upon the expiration of the trust term, X is to be held in trust for b years for the benefit of Child. If Child survives the b-year period, the property in QPRT is to be distributed to her outright. If Child does not survive the b-year period, the property in QPRT is to be distributed to Child's living descendants, either by Child's exercise of a limited testamentary power of appointment or by the terms of the QPRT. The trust term and estate tax inclusion period (ETIP) for the transfer of X to QPRT ended on Date 2. At the present time, X is being held for the exclusive benefit of Child.

Taxpayer timely filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for her Year 1 transfer of the remainder interest in the QPRT to Child. Taxpayer's Form 709 was prepared by Law Firm. Taxpayer did not intend to allocate any of her GST exemption to the transfer, and the tax law in Year 1 did not provide for an automatic allocation of GST exemption to lifetime transfers to GST trusts. However, subsequent to the transfer on Date 1 and prior to the termination of the ETIP on Date 2, section 2632 was amended, resulting in an automatic allocation of Taxpayer's GST exemption to her transfer to the QPRT, effective on Date 2.

Taxpayer now requests an extension of time to make an election under section 2632(c)(5) to have section 2632(c)(1) not apply to the indirect skip deemed to have been made upon termination of the ETIP with respect to the QPRT as of Date 2.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under section 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 section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in section 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), reduced by the sum of certain taxes and charitable deductions.

Section 2631(a), as in effect at the time of the transfer in this case, 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 section 2631(c)) that 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 section 2631(a), once made, shall be irrevocable.

Section 2632(c), effective for transfers subject to the gift or estate tax after December 31, 2000, and to ETIPs ending after December 31, 2000, provides that if any individual makes an "indirect skip" during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that the term "indirect skip" means any transfer of property (other than a direct skip) subject to the gift tax made to a GST trust. Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Section 2632(c)(4) provides that an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

Section 2642(f)(1) provides that for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual if such individual died immediately after making such transfer (other than by reason of section 2035), any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under section 2642(f)(2)).

Section 2642(f)(3) provides, in part, that the term "estate tax inclusion period" means any period after the transfer described in section 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor if he died.

Under section 2632(c)(5)(A), an individual may elect to have the automatic allocation of GST exemption not apply to an indirect skip under section 2632(c)(1) or section 2632(c)(4). Section 2632(c)(5)(B) provides that the election shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to section 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 26.2632-1(b)(2)(iii) of the Generation-Skipping Transfer Tax Regulations provides that in the case of a transfer subject to section 2642(f) (the estate tax inclusion period), the election is to be made by attaching a statement (election out statement) to a Form 709 filed on or before the due date for timely filing of the Form 709 for the calendar year in which the ETIP closes. The Form 709, with the attached statement, must be filed whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year. The election out statement must identify the trust and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Prior year transfers that are subject to section 2642(f) (the estate tax inclusion period), and to which the election out is to apply, must be specifically described or otherwise identified in the election out statement.

Section 2642(g)(1)(A) provides, in relevant part, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an election under section 2632(c)(5).

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. For purposes of determining whether to grant relief, the time for making the election shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides, in relevant part, that under section 2642(g)(1)(B), the time for electing out of the automatic allocation rules is 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 election described in section 2632(c)(5) under the provisions of section 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 sections 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 section 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 section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in section 2632(c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 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 representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election out of the automatic allocation of GST exemption under section 2632(c)(5) with respect to the transfer to the QPRT.

The election should be made in accordance with the provisions of section 26.2632-1(b)(2)(iii) of the regulations. The Supplemental Form 709 and election out statement are to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709. A copy 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, no opinion is expressed with respect to the qualification of QPRT as a qualified personal residence trust under section 2702(a)(3)(A)(ii).

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 your authorized representative.

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)

Enclosures

Copy for section 6110 purposes
Copy of letter

cc: