

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200919013**

Release Date: 5/8/2009

Index Number: 9100.00-00, 2642.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-135304-08

Date:

February 03, 2009

Re:

Legend:

Grantor =

Taxpayer =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Trust =

Dear _____ :

This letter responds to a letter dated August 12, 2008, from your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate Taxpayer's available GST exemption to a trust.

Facts

On Date 1, Grantor amended and restated Trust, a revocable trust, for the benefit of his spouse (Taxpayer) and their descendants. Grantor died Date 2. Under the terms of Trust, upon Grantor's death, three trusts were created: Marital Trust 1, Marital Trust 2, and Family Trust. Trust provided for the creation of a fourth trust, Remainder Trust. However, this trust was not established upon Grantor's death because there were no assets remaining to fund the trust. Grantor's executor elected to treat Marital Trust 2 as

qualified terminable interest property (QTIP) under § 2056(b)(7). The executor of Grantor's estate did not make a "reverse QTIP" election under § 2652(a)(3).

On Date 3, Taxpayer died and her executor filed a timely Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return and included Marital Trust 2 in Taxpayer's gross estate. However, in an affidavit, Taxpayer's attorney (Attorney), who prepared the Form 706, states that she failed to advise the executor concerning the GST exemption and inadvertently failed to allocate Taxpayer's GST exemption to Marital Trust 2.

Pursuant to Trust, upon Taxpayer's death, Marital Trust 2 terminates and the assets of Marital Trust 2 are to be distributed to Grantor's issue pursuant to a power of appointment and, to the extent assets are not appointed and Taxpayer's executor allocates any portion of Taxpayer's GST exemption to such assets, the assets are to be added to Family Trust. Family Trust and trusts that may be created under such instruments benefit Grantor's children and grandchildren.

Recently, one of the trustees of Family Trust and Marital Trust 2, when preparing to consolidate the assets of Family Trust and Marital Trust 2, discovered that Attorney failed to allocate Taxpayer's GST exemption to Marital Trust 2.

To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Marital Trust 2 that would give rise to a GST liability on the part of the trust or any of its beneficiaries.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer (GST) (within the meaning of subchapter B). A "generation-skipping transfer" 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 exemption amount 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)(1) provides that any allocation by an individual of his 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(d)(1) provides, in part, that an allocation of decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or

Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption by an executor with respect to property included in the gross estate of a decedent is effective as of the date of death.

Section 2642(b)(2)(A) and (B) provides, if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned. Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

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 this paragraph.

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, 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.

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.

Under § 301.9100-3(b)(iv), 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.

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). 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.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Taxpayer's executor is granted an extension of time of 60 days from the date of this letter to allocate Taxpayer's available GST exemption to Marital Trust 2. The allocations will be effective as of Date 3, and will be based on the value of the assets held in Marital Trust 2.

The allocations of Taxpayer's GST exemption should be made on supplemental Form 706 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 706.

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

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes
Copy of this letter

cc: