

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-119168-09

Date: JULY 21, 2009

Re:

Legend:

Decedent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Child=

B=

Step-daughter =

Bank =

Trust =

Dear _____ :

This responds to the letter dated April 6, 2009, submitted by your authorized representatives, requesting a ruling under § 2632(e) and 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) 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.

Facts

The facts submitted and representations made are as follows. Decedent executed her will on Date 1, prior to October 22, 1986, and died on Date 2, after October 21, 1986. Under the terms of her will, the residue of Decedent's estate passed to a testamentary trust (Trust) for the lifetime benefit of Step-daughter. Under the terms of Trust, all Trust net income is to be paid to Step-daughter for life, and on Step-daughter's death, the trust is to terminate and the trust corpus is to be distributed in equal shares to Step-daughter's surviving children.

Bank and Step-daughter were appointed as co-executors of Decedent's estate and as co-trustees of Trust. Subsequently, Bank resigned as co-trustee and Step-daughter's child, Child, was appointed as co-trustee. The co-executors timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax return on Date 3. Step-daughter died on Date 4. Step-daughter's child, Child, is currently serving as successor executor and as trustee of Trust.

It is represented that during her lifetime, the Decedent made no transfers of property that were subject to the generation-skipping transfer (GST) tax and that no part of her available GST exemption was used or applied to any lifetime transfers. Further, it is represented that under the terms of Decedent's will, the only transfer that could potentially be subject to GST tax was the residuary bequest to Trust described above.

You have requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file the physician's certification required under § 26.2601-1(b)(3)(iii) of the Generation-Skipping Transfer Tax Regulations. You have also requested a ruling regarding the application of the automatic allocation rules under § 2632(e).

Law and Analysis

Section 2601 of the Code imposes a tax on every generation-skipping transfer made after October 22, 1986.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, 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 GST exemption under § 2631 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.

Section 2631(a), as in effect for the tax year at issue, provided that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 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 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) is deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death. See also, § 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i) of the Generation-Skipping Transfer Tax Regulations, 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 decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or care of the decedent's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, 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. Section 26.2601-1(b)(3)(iii)(B) provides that the items listed in § 26.2601-1(b)(3)(iii)(A) will be considered relevant, but not determinative, in establishing decedent's state of competency.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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. § 301.9100-1(b) provides that the term election includes an application for relief in respect of tax.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

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. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time of 60 days from the date of this letter is granted to file the required physician's certification or other evidence. In this case, the certification or other evidence should be attached to the Form 706-GS(T) reporting the termination of Trust and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 706-GS(T). A copy is enclosed for this purpose.

As discussed above, under § 26.2601-1(b)(3)(iii)(B), the evidence to be submitted will be considered relevant, but not determinative, in establishing decedent's state of competency. If it is determined that Trust is not exempt from GST tax pursuant to § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3), then, based on the facts submitted and representations made, we conclude that the Decedent's unused GST exemption was allocated to Trust pursuant to § 2632(e).

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.

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

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,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter