

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-103885-09

Date:

July 15, 2009

Re:

Legend:

Grantor =

Spouse =

Trust =

\$X =

Accountant =

Firm =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear _____ :

This responds to your authorized representative's letter dated January 12, 2009, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

Facts

The facts and representations submitted are summarized as follows: Grantor and Spouse created an irrevocable trust (Trust) on Date1, for the benefit of their descendants. Grantor is the trustee of Trust. Trust was funded in Year 1 with real property with a fair market value of \$X.

Grantor and Spouse hired Accountant to prepare all necessary federal and state forms and to properly calculate and report the gift and GST taxes arising from their gift in Year 1. Accountant signed an affidavit stating that he was engaged to prepare the Forms 709 United States Gift (and Generation-Skipping) Tax Return for Grantor and Spouse to report their gifts of one-half of the property to Trust. He further stated that he understood that the engagement included properly calculating any GST tax that arose from the gift, and determining whether Grantor or Spouse needed to allocate their GST exemption to Trust. He also stated that due to his lack of understanding of the GST tax, he never provided Grantor and Spouse with any information regarding the GST exemption allocation. The error was discovered by Grantor and Spouse's estate planning attorney at Firm while he was reviewing the Trust and other estate planning documents, including the prior gift tax returns.

From Year 1 to Year 2, distributions were made to Grantor and Spouse's children. In Year 3, one of those children died. In Year 4, distributions were made to grandchildren, who are the children of the deceased child. A return reporting those Year 4 distributions has not yet been filed, pending this ruling request.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a "skip person." 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), 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 (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 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

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 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 § 2001(f)(2)).

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.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

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.

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)(iv) 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 § 301.9100-3 are satisfied. Therefore, Spouse is granted an extension of time of 60 days from the date of this letter to make an allocation of her available GST exemption with respect to her transfer to Trust in Year 1. The allocation will be effective as of the date of the transfer to Trust, and the value of the transfer to Trust as determined for federal gift tax purposes will be used in determining the inclusion ratio with respect to Trust.

This allocation should be made on a Supplemental Form 709 and filed with the Internal Revenue Service, Cincinnati Service Center at the following address: Internal

Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Supplemental Form 709.

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 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 section 6110 purposes
Copy of this letter