

Internal Revenue Service

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[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-106904-15
Date: JUNE 01, 2015

Legend

- Grantor =
- Spouse =
- Trust =

- Trustees =
- Accountant =
- Accounting Firm =
- Law Firm =
- Date 1 =
- Year 1 =
- Year 2 =

Dear _____ :

This responds to your personal representative's letter of January 29, 2015, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate generation-skipping transfer (GST) exemption to a trust.

Facts

The facts and representations submitted are summarized as follows: Grantor established Trust, an irrevocable trust, on Date 1, in Year 1. Trust was created for the benefit of Spouse and Grantor's descendants. Trust was funded with stock. No additional transfers have been made to Trust.

Section 3 of Trust provides, in part, that during Spouse's lifetime, the independent Trustee, in his sole discretion, may distribute so much of the net income of Trust as the Trustee may deem appropriate. Upon the written request of Spouse, the Trustee will pay to Spouse, or use for Spouse's benefit, so much of the principal of Trust as Spouse may request not to exceed five percent of the value of the principal of Trust valued at the end of the calendar year. In addition, Trustee may, in his sole discretion, pay so much of the principal as is necessary for Spouse's maintenance, support and health.

At Spouse's death, Trust is to be divided into equal shares to provide one share for each living child of Grantor, and one equal share for the then living descendants of a deceased child of Grantor. Until the 10th anniversary of Spouse's death, Trustee, in Trustee's sole and absolute discretion, may pay to each child so much of the net income and principal as Trustee deems appropriate for the child's maintenance in reasonable comfort, support, health and for other purposes as Trustee deems appropriate. After the 10th anniversary of Spouse's death, Trustee may distribute to or for the benefit of the child, so much of the net income as Trustee, in its sole discretion, deems appropriate. Upon the written request of the child, the Trustee will pay to the child, or use for the child's benefit, so much of the principal of Trust as the child may request not to exceed five percent of the value of the principal of Trust valued at the end of the calendar year. In addition, Trustee, in its sole discretion, may pay so much of the principal as is necessary for the child's maintenance, support and health. In addition, after the 10th anniversary of Spouse's death, and for the life of the child, each child has a limited power to appoint the principal and income of their trust to any of Grantor's descendants, other than such child, as the child designates, in writing.

Accountant prepared the Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1. Grantor's Year 1 Form 709 reflected the gift to Trust. However, Grantor failed to allocate any of her GST exemption to Trust. The error was discovered in Year 2 when Law Firm discovered that no GST exemption had been allocated to the Year 1 transfer on Grantor's Form 709.

Grantor signed an affidavit stating that she intended that Trust be a generation-skipping trust and that she relied on Accountant to make the election in order for Trust to pass without triggering the GST tax. Accountant signed an affidavit stating that

Accounting Firm prepared Grantor's Form 709, but did not allocate any of Grantor's GST exemption to Trust.

You have requested an extension of time under § 2642(g)(1) and § 301.9100-3 to allow Grantor to allocate her GST exemption to the transfer to Trust in Year 1.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. 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 GST tax, 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 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, other than in a direct skip, 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 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 under this paragraph, 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 301.9100-1(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 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). 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)(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, Grantor is granted an extension of time of 120 days from the date of this letter to allocate her available GST exemption to the Year 1 transfer to Trust. The allocation will be effective as of the respective 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 amount of Grantor's GST exemption to be allocated to Trust.

This allocation should be made on a supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709.

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 or imply 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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes
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