

Internal Revenue Service

Number: **200618001**

Release Date: 5/5/2006

Index Number: 9100.00-00, 2642.06-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-100481-05

Date: JANUARY 12, 2006

Re:

Legend

Decedent =

Son =

Daughter-in-law =

Trust 1 =

Trust 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

\$x =

Attorney =

Dear _____ :

This is in response to your letter from your authorized representative dated December 27, 2004, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) exemption under § 2642(g) of the Internal Revenue Code.

According to the facts submitted, on Date 1, Decedent established an irrevocable trust, Trust 1, for the benefit of Son, Daughter-in-law and Son's issue. Also on Date 1, Decedent transferred \$x to Trust 1. It is represented that no additional contributions have been made to Trust 1. The trust instrument generally provides that, upon any contribution to Trust 1, Son, Daughter-in-law and any of Son's issue living on the date of contribution, are entitled to withdraw the contribution to Trust 1. The right to make withdrawals with respect to any contribution terminates to the extent the right is not

exercised within 30 days after the date of contribution. You represent that, at the time of the Date 1 transfer to Trust 1, Son and Daughter-in-law had one minor child. Neither Son nor Daughter-in-law elected to exercise the right of withdrawal granted to them and they elected not to exercise the right of withdrawal on behalf of their minor child.

On Date 2, Decedent created a second irrevocable trust, Trust 2, for the benefit of his Son, Daughter-in-law and grandchildren. On Date 3, Decedent transferred \$x to Trust 2. The trust instrument generally provides that, upon any contribution to Trust 2, Son has the right to withdraw the contribution. Son did not exercise his right upon the contribution of \$x. It is represented that no additional contributions have been made to Trust 2.

Decedent did not file federal gift tax returns, Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the contributions to Trust 1 or Trust 2. Decedent died on Date 4. A Schedule R was not filed with Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and no GST exemption was allocated on the Form 706.

In Year, Attorney was asked to serve as a successor trustee. Upon a review of the trust instruments and related documents, Attorney discovered that Decedent's GST exemption had not been allocated to the trusts.

The following rulings have been requested:

1. The IRS grant an extension of time under § 2642(g)(1) within which the estate can make a timely allocation of Decedent's GST exemption to the Date 1 transfer by Decedent to Trust 1 and to the Date 3 transfer by Decedent to Trust 2, and that the effective date of the allocation of Decedent's GST exemption will be the date of the transfer.
2. The automatic allocation of GST exemption under § 26.2632-1(d)(2) to one or both of the trusts that occurred at Decedent's death is void or ineffective.

Law and Analysis

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.

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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's estate is granted an extension of time of 60 days from the date of this letter to allocate Decedent's available GST exemption to the Date 1 transfer to Trust 1 and to the Date 3 transfer to Trust 2. The allocations will be effective as of the respective dates of the transfers and the gift tax value of the transfers will be used in determining the inclusion ratio with respect to the trusts. If the amount allocated to Trust 1 and Trust 2 pursuant to the relief granted in this ruling is sufficient such that the inclusion ratio of Trust 1 and Trust 2 with respect to Decedent's transfers to Trust 1 and Trust 2 will be zero, then because the allocation is deemed to precede in time the automatic allocation of Decedent's GST exemption under § 26.2632-1(d)(2), the automatic allocation is null and void.

The allocation of Taxpayer's GST exemption should be made on Form 709s 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 709s. This ruling does not extend the time to file the Form 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. We are specifically not ruling regarding the inclusion ratios of Trust 1 and Trust 2. We note that based on the facts as presented, if the amount of GST exemption allocated to Trust 1 and Trust 2 respectively is \$x, the allocation may not be sufficient to produce a zero inclusion ratio with respect to Trust 1 or Trust 2.

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.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: