

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200532023**

Release Date: 8/12/2005

Index Number: 9100.00-00, 2642.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

In Re: Private Letter Ruling Request

Refer Reply To:
CC:PSI:B09
PLR-136122-04

Date:
April 22, 2005

LEGEND

- Taxpayer =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Year 7 =
- Year 8 =
- Year 9 =
- Irrevocable Trust =
- Date 1 =
- \$a =
- Date 2 =

Dear :

This is in response to your authorized representative's letter dated June 28, 2004, and subsequent correspondence, 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 allocations of Taxpayer's generation-skipping transfer (GST) tax exemption to the Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, Year 7, Year 8, and Year 9 transfers to Irrevocable Trust.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer created Irrevocable Trust, a trust with GST potential. From Year 1 through Year 9, Taxpayer transferred \$a annually to Irrevocable Trust.

Taxpayer died on Date 2. Taxpayer's estate now requests that an extension of time be granted under § 2642(g) and § 301.9100-3 to make allocations of Taxpayer's

GST exemption with respect to the Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, Year 7, Year 8, and Year 9 transfers to Irrevocable Trust.

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 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) in effect at the time of the transfer provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) 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.

Under § 2632(c), any portion of an individual's GST exemption not allocated within the time prescribed in § 2632(a), is allocated automatically. Section 2632(c)(1) provides that if an individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 26.2632-1(b)(2)(i) 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, United States Gift (and Generation-Skipping Transfer) Tax Return. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain a zero inclusion ratio with respect to the trust.

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 or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12 (within the meaning of § 2001(f)(2)), and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides, generally, 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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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 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 and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that 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.

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.

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). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. 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 with respect to the transfers made by Taxpayer to Irrevocable Trust in Year 1 through Year 6, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, we grant an extension of time of 60 days from the date of this letter for Taxpayer's estate to allocate \$a of Taxpayer's GST exemption to the transfers to Irrevocable Trust in each of Year 1 through Year 6. The allocations will be effective as of the dates of the transfers to Irrevocable Trust.

The allocations of Taxpayer's GST exemption to the Year 1 through Year 5 transfers should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. Copies of this letter should be attached to each supplemental Form 709. Copies are enclosed for this purpose.

The allocation to the Year 6 transfer should be made on a Form 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

No extension of time is granted with respect to the Year 7, Year 8, and Year 9 transfers to Irrevocable Trust because Taxpayer's GST exemption has already been allocated to those transfers pursuant to the automatic allocation rules set forth in § 2632(c)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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.

Sincerely,

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

Enclosures

Copy of letter for 6110 purposes
Copy of letter

cc: