

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200535025**

Release Date: 9/2/2005

Index Number: 2632.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-166095-04
Date: APRIL 21, 2005

- Legend
- Taxpayer =
- Spouse =
- Trust =
- Child 1 =
- Child 2 =
- X =
- Date 1 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Year 7 =
- Law Firm =

Dear _____ :

This is in response to a letter dated December 22, 2004 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an election under § 2632(c)(5)(A).

The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer, as grantor, established an irrevocable trust, Trust, for the benefit of his children, Child 1 and Child 2, and each child's issue in the event a child dies prior to the trustee disposing of the child's remaining balance in Trust. The trustee of Trust is Child 1. Trust owns a second to die life insurance policy on the lives of Taxpayer and Spouse. In Years 1 through 7, Taxpayer and Spouse made transfers to Trust to pay the annual premium on the policy. Trust does not own any other assets.

At the time of the creation of Trust on Date 1, the automatic allocation rules under § 2632(c) were not in effect. Accordingly, the qualified tax professional at Law Firm who prepared Trust did not advise Taxpayer and Spouse of any necessity to make an election under these rules. The automatic allocation rules became effective for transfers to trusts in Year 5. In Years 5 and 6, Taxpayer and Spouse each transferred \$X to Trust. This amount did not exceed the annual exclusion amount under § 2503 and, accordingly, they did not file United States Gift (and Generation-Skipping Transfer) Tax Returns, Forms 709, to report those transfers to Trust. Further, Taxpayer and Spouse were not aware of the necessity to make the election under § 2632(c)(5) and, accordingly, did not seek the advice of a qualified tax professional with respect to the election. In Year 7, Taxpayer and Spouse became aware of the automatic allocation rules and the election under § 2632(c). On Forms 709 for Year 7, Taxpayer and Spouse each reported their respective transfers to Trust and elected to have the automatic allocation rules under § 2632(c) not apply to those transfers and to future transfers to Trust.

Taxpayer and Spouse request that Taxpayer and Spouse each be granted an extension of time under § 301.9100 pursuant to § 2632(c)(5)(A)(i)(II) to have the automatic allocation rules contained in § 2632(c) not apply to Taxpayer's and Spouse's Year 5 and 6 transfers to Trust.

Under section 2631(a), for purposes of determining the generation-skipping transfer (GST) tax, every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation as provided in section 2631(c)) which may be allocated by the individual to any property with respect to which the individual is the transferor for GST tax purposes.

Under § 2632(c) if any individual makes a transfer to a GST trust, as defined in § 2632(c)(3)(A), 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. Section 2632(c)(5) provides that an individual may elect on a timely filed gift tax return to have this subsection not apply to any or all transfers made by such individual to a particular trust.

Section 2642(g)(1)(A) provides, in part, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an election under § 2632(c)(5). Section 2642(g)(1)(B) provides that for purposes of determining whether to grant relief, the time for making the 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.

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. Notice 2001-50, 2001-2 C.B. 189 provides that taxpayers may seek an extension of time to make an election described in § 2632(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)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Trust is a GST Trust for purposes of § 2632(c). We conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer and Spouse are granted an extension of time of 90 days from the date of this letter to elect pursuant to § 2632(c)(5), to have the automatic allocation rules contained in § 2632(c)(1) not apply to Taxpayer's and Spouse's Year 5 and 6 transfers to Trust.

The elections should be made on Supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A statement must be attached to each Form 709 identifying the trust, describing the transfers, and specifically providing that the transferor is electing, pursuant to § 2632(c)(5)(A), to have the automatic allocation rules contained in § 2632(c)(1) not apply to the described transfers to the trust. See Prop. Reg. § 26.2632-1(b)(2)(ii).

A copy of this letter should be attached to the Forms 709. A copy is enclosed for this purpose.

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 ruling contained in this letter is 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 ruling, it is subject to verification on examination.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter