

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B9-PLR-161516-02
Date:
January 22, 2003

Re

Legend

- Decedent =
- Trust 1 =
- Date 1 =
- Date 2 =
- Trust 2 =
- Trust 3 =
- Trust 4 =
- Date 3 =
- Year 1 =

Dear :

This is in response to your letter dated December 3, 2002, and prior correspondence, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file a qualified physician's certification with respect to the decedent's incompetency as required by § 26.2601-1(b)(3) of the Generation-Skipping Transfer Tax Regulations.

The facts submitted and representations made are summarized as follows: Decedent created Trust 1 on Date 1 and subsequently amended and restated it entirely on Date 2. Trust 2, Trust 3, and Trust 4 were created under the terms of Trust 1 as a result of Decedent's death on Date 3. The trustees represent that no additions have been made to Trust 1, Trust 2, or Trust 3.

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It is represented that Decedent was incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of Trust 1 before his death. Decedent's estate tax return was timely filed, however, due to inadvertence, certification from a qualified physician or sufficient other evidence of Decedent's incompetence as required by § 26.2601-1(b)(3) was not attached. Decedent's primary physician and psychiatrist issued the required certifications in Year 1.

The trustees have requested an extension of time for filing one or more qualified physician's certifications with respect to Decedent's incompetency as required by § 26.2601-1(b)(3).

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i), if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or care of the decedent's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706 either - (1) a certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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.

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Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Consequently, we grant an extension of time for filing the required physician certification with the Internal Revenue Service Center, Cincinnati, Ohio 45999. You should file a supplemental Form 706 within 60 days of the date on this letter and attach to the Form 706 the Year 1 physician certifications and a copy of this letter. A copy of this letter is enclosed for this purpose.

Except as 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.

Specifically, we express no opinion as to whether Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for 6110 purposes

Copy to file with the supplemental Form 706