

The facts and representations submitted are summarized as follows: Taxpayer 2 created Trust on Date 1. Trust is an irrevocable trust created for the benefit of Taxpayer 2's issue.

Article second, paragraph A, provides that the trustees may pay so much of the net income and principal of Trust as necessary for the health, maintenance, and education of one or more of Taxpayer 2's children who are living during the trust term.

Article second, paragraph B, provides that on Date 4, the trustees shall divide the trust property into as many equal shares as are necessary to enable one share to be set apart for each child of Taxpayer 2 who is then living. Each share shall be held in further trust as a separate trust for the benefit of each respective child of Taxpayer 2 and such child's issue living from time to time until the expiration of the trust term.

Article second, paragraph B, subparagraph 1, provides that during the trust term, the trustees may pay so much of the net income and principal of the trust as necessary for the health, maintenance, and education of one or more persons consisting of the child of Taxpayer 2 for whom the trust was created and such child's issue who are living during the trust term.

Article second, paragraph B, subparagraph 2, provides that upon the expiration of the trust term, the trustees shall distribute the trust property to the child's then living issue, per stirpes. If the child has no then living issue, the trustees shall distribute the trust property to Taxpayer 2's other then living issue, per stirpes.

Potential beneficiaries of Trust include individuals who are two or more generations below the generation of Taxpayer 2. Therefore, distributions from Trust may be subject to the GST tax.

On Date 1, Taxpayer 2 transferred a shares of publicly-traded stock, valued at \$b, to Trust. On Date 2, Taxpayer 2 transferred c shares of publicly-traded stock, valued at \$d, to Trust. Taxpayer 1 and Taxpayer 2 each consented on his and her Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Year 1 and Year 2 to treat the gifts made in Year 1 and Year 2 as being made one-half by each pursuant to § 2513.

In a letter from the drafting attorney to Taxpayer 2, which contained a draft of the trust instrument, Taxpayer 2 was advised that the transfer of the stock in Year 1 would use a portion of Taxpayer 1's and Taxpayer 2's respective GST tax exemptions. A certified public accountant, on whose expertise Taxpayer 1 and Taxpayer 2 relied, received a copy of this letter. In preparing the returns for both Year 1 and Year 2, the accountant inadvertently failed to allocate Taxpayer 1's and Taxpayer 2's available GST tax exemptions to the transfers. Accordingly, although timely filed Forms 709 reporting the transfer and consenting to split the gift pursuant to § 2513 were filed by Taxpayer 1 and Taxpayer 2 for Year 1 and Year 2, no notices of allocation were attached to the returns.

Taxpayer 2 died on Date 3. The failure to allocate Taxpayer 1's and Taxpayer 2's available GST exemption to the Year 1 and Year 2 transfers to Trust was discovered by Taxpayer 2's estate planning attorney during the administration of Taxpayer 2's estate.

The executor of Taxpayer 2's estate and Taxpayer 1 have requested an extension of time to make allocations of GST tax exemption under § 2642(g) with respect to the assets transferred to Trust in Year 1 and Year 2. In addition, the executor of Taxpayer 2's estate and Taxpayer 1 request that the allocations be based on the value of the assets transferred to the trust, as of the date of the original transfers.

Section 2601 imposes a tax on every GST. A GST 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 inclusion ratio, every individual shall be allowed a GST tax exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which 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 tax 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.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST tax 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 § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

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 tax 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 tax 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 GST 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

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.

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 election 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 to 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, Taxpayer 1 and the estate of Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to file supplemental Forms 709 for the Year 1 and Year 2 transfers to Trust. The Forms 709 should include Notices of Allocation properly allocating the GST exemption of Taxpayer 1 and Taxpayer 2 to the Year 1 and Year 2 transfers. The allocations will be effective as of the date of the transfers, and the gift tax value of the transfers to Trust will be used in determining the amount of GST tax exemption to be allocated to

the trust. The inclusion ratios for Trust will be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to the supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is included 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 taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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)

Enclosure (1)

cc: