

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200528010**

Release Date: 7/15/2005

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-127926-04

Date:
March 30, 2005

Re: Private Letter Ruling Request

LEGEND

- Husband =
- Wife =
- Date 1 =
- Trust 1 =
- Child 1 =
- Trust 2 =
- Child 2 =
- Year 1 =
- Year 2 =
- Company =
- \$a =
- \$b =
- Law Firm =
- Date 2 =

Dear _____ :

This is in response to your authorized representative's letter dated April 27, 2004, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Husband's and Wife's respective generation-skipping transfer (GST) tax exemptions.

The facts and representations submitted are summarized as follows: On Date 1, Husband created Trust 1 for the benefit of Child 1 and her descendants and Trust 2 for the benefit of Child 2 and her descendants.

In Year 1 and Year 2, Husband and Wife transferred Company stock valued at \$a and \$b, respectively, to each of Trust 1 and Trust 2. Husband and Wife retained Law Firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1 and Year 2. The returns reported the transfers to Trust 1 and Trust 2 and reflected Husband's and Wife's intention to treat the transfers as being made one-half by each pursuant to § 2513. However, in preparing the returns Law Firm failed to allocate Husband's and Wife's GST exemptions to the Year 1 and Year 2 transfers to Trust 1 and Trust 2.

Husband died on Date 2. Wife and Husband's estate now request that an extension of time be granted under § 2642(g) and § 301.9100-3 to make allocations of their respective GST exemptions with respect to the Year 1 and Year 2 transfers to Trust 1 and Trust 2 and that the allocations be effective as of the dates of the original transfers.

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.

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.

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.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

Section 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

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 Husband and Wife to Trust 1 and Trust 2 in Year 1 and Year 2, 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 Wife and Husband's estate to make allocations of their respective GST exemptions to the Year 1 and Year 2 transfers to Trust 1 and Trust 2. The allocations will be effective as of the dates of the transfers, and the gift tax values of the transfers will be used in determining the amount of GST exemption to be allocated to each transfer.

The allocations of Husband's and Wife's GST exemptions 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.

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. In addition, we express or imply no opinion regarding the value of the property transferred to Trust 1 and Trust 2.

This ruling is directed only to the taxpayer(s) 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 & Special Industries)

Enclosures

Copy of letter
Copy for 6110 purposes

cc: