

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B09  
PLR-165224-04

Date:  
June 21, 2005

Legend

Husband =  
Trust A =

Wife =  
Trust B =

Date 1 =  
Year 1 =  
Date 2 =  
Trust C =

Trust D =

Dear :

This is in response to your letter dated December 8, 2004, and subsequent correspondence, requesting extensions of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to lifetime transfers to trusts.

The facts and representations submitted are summarized as follows: On Date 1, Husband created Trust A and Wife created Trust B. Both Trust A and Trust B are trusts with GST potential. Husband and Wife each made gifts of life insurance policies on their own life to their respective trust in Year 1. Husband and Wife each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1 and each elected to split gifts under § 2513. The qualified tax professionals relied upon by

Husband and Wife inadvertently failed to properly allocate each taxpayer's generation-skipping transfer tax exemption to the transfers to Trust A and Trust B.

Wife died on Date 2. On Wife's death, a revocable trust created during Wife's lifetime was split into Trust C, a family trust, and Trust D, a marital trust. The Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, filed on behalf of Wife's estate included an allocation of GST exemption to Trust C giving Trust C a zero inclusion ratio. In addition, the Form 706 included a statement that Wife's estate was seeking an extension of time to allocate Wife's GST exemption to Trust B. A protective allocation of GST exemption was made to Trust B in the event that relief was denied. In addition, the representative of Wife's estate proposed to sever Trust B into exempt and non-exempt portions in the event that relief was denied.

Husband and the representative of Wife's estate have requested the following rulings: (1) an extension of time to allocate Wife's GST exemption to the Year 1 transfers to Trust A and Trust B based on the Date 1 values of the policies; (2) an extension of time to allocate Husband's GST exemption to the Year 1 transfers to Trust A and Trust B based on the Date 1 values of the policies; (3) the protective allocation of GST exemption made to Trust B on the Form 706 filed on behalf of Wife's estate is void; and (3) the proposed severance of Trust B was never effective because the inclusion ratio of Trust B at the time the Wife's Form 706 was filed was zero.

## LAW AND ANALYSIS

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of chapter 12, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in § 2513(b)) their consent to the application of § 2513(a)(1) in the case of all such gifts made during the calendar year by either while married to the other.

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 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST 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 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(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero 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 § 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 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 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.

## CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband and the representative of Wife's estate are granted extensions of time of 60 days from the date of this letter to make allocations of each taxpayer's GST exemption to the Year 1 transfers to Trust A and Trust B. A supplemental Form 709 should be filed for each taxpayer for Year 1. Each supplemental Form 709 should include a Notice of Allocation properly allocating the taxpayer's GST exemption to the transfers to Trust A and Trust B. The allocations will be effective as of the date of the transfers, and the gift tax value of the transfer to the trusts will be used in determining the amount of GST exemption to be allocated to each trust. The inclusion ratios for Trust A and Trust B will be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to each supplemental form and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is included for this purpose. Furthermore, the allocation of GST exemption to Trust B made on the Form 706 filed on behalf of Wife's estate is void because the amount allocated exceeds the amount necessary to obtain a zero inclusion ratio. Finally, the proposed severance of Trust B is not necessary because the inclusion ratio of Trust B was not between one and zero.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

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.

Sincerely,

Heather C. Maloy

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

Enclosures

Copy of this Letter

Copy of this Letter for § 6110 purposes

cc: