

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-119892-05

Date:

October 17, 2005

Year 1 =

Law Firm =

Husband =

Wife =

Trust 1 =

Trust 2 =

Trust 3 =

Limited Partnership =

a =

b =

Year 2 =

Accounting Firm 1 =

Year 3 =

Accounting Firm 2 =

Dear :

This responds to your representative's letter dated April 7, 2005, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of your generation-skipping transfer (GST) tax exemption.

## FACTS

The facts and representations submitted are summarized as follows: In Year 1, in consultation with Law Firm, Husband and Wife (the grantors) created Trust 1, Trust 2, and Trust 3, irrevocable trusts created for the benefit of the grantors' children and more remote descendants. In the same year, Husband transferred to each trust units of

Limited Partnership valued at \$a and Wife transferred to each trust units of Limited Partnership valued at \$b. Each trust provides for a generation-skipping transfer to occur upon the death of the child income beneficiary of each trust. The grantors each transferred additional units of Limited Partnership to each trust in Year 2, under terms and in amounts qualifying for the gift tax annual exclusion provided in § 2503(b).

The grantors provided Accounting Firm 1 with all of the information regarding the Year 1 and Year 2 transfers and requested that Accounting Firm 1 prepare the United States Gift (and Generation-Skipping Transfer) Tax Forms (Forms 709) to report the transfers. The grantors each consented to split the gifts of the other spouse pursuant to § 2513. Accounting Firm 1 inadvertently failed to allocate the grantors' available GST tax exemption to the transfers by failing to attach a notice of allocation to each of Husband's and Wife's Form 709 for Year 1. No Forms 709 were prepared for Year 2 for either Husband or Wife.

The failure to allocate GST tax exemption to the transfers in Year 1 and Year 2 was discovered in Year 3 by Accounting Firm 2. The grantors now request an extension of time to allocate GST tax exemption under § 2642(g) with respect to the assets transferred to Trust 1, Trust 2, and Trust 3 in Year 1 and Year 2.

## LAW AND ANALYSIS

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident, or nonresident. Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2503(b) provides that in the case of gifts (other than gifts of future interest in property) made to any person by the donor during the calendar year, the first \$10,000 (adjusted for inflation) of such gifts to such person shall not, for purposes of § 2503(a), be included in the total amount of gifts made during such year.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall, for purposes of this chapter, 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 § 2513(a)(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 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), as in effect at the time of the transfer, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST tax exemption of \$1,000,000 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, Husband and Wife are granted an extension of time of 60 days from the date of this letter to allocate GST exemption to the Year 1 and Year 2 transfers made to Trust 1, Trust 2, and Trust 3. The allocations will be effective as of the date of the transfers, and the value of the transfers for gift tax purposes will be used in determining the amount of GST tax exemption to be allocated. The inclusion ratio for the trusts should be determined under § 2642(a) and (b).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of this transaction. Specifically, we have not expressed an opinion as to whether the Year 1 and Year 2 transfers to the trusts are subject to an estate tax inclusion period under § 2642(f). In addition, we have specifically not ruled on the value of the Year 1 and Year 2 transfers to the trusts. The allocations of GST exemption should be made on Forms 709 and filed with the Cincinnati Service Center at Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. Copies of this letter should be attached to each Form 709. Copies are enclosed for this purpose.

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.

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.

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

Sincerely,

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

cc: