

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-140579-05

Date:

May 08, 2006

Legend

Husband =

Wife =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Year 1 =

Year 2 =

Dear :

This is in response to your letter dated September 21, 2005, and prior correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Husband's and Wife's generation-skipping transfer (GST) exemptions to transfers to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7.

The facts and representations submitted are summarized as follows: Husband created Trust 1, Trust 2, Trust 3, and Trust 4 in Year 1. Each trust is for the primary benefit of one of Husband's children and has GST potential. In Year 1, Husband also created Trust 5, Trust 6, and Trust 7, each for the benefit of one of his grandchildren. During Year 1, Husband transferred non-publicly traded stock to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7.

Husband and Wife each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1 and elected to split gifts under § 2513. Husband's gift tax return allocated GST exemption to the transfers to Trust 5, Trust 6, and Trust 7, but based on the valuations listed on the return, the allocations were in excess of his share of those transfers. No GST exemption was allocated on Husband's gift tax return to the transfers to Trust 1, Trust 2, Trust 3, and Trust 4. In addition, no GST exemption was allocated on Wife's gift tax return.

Husband and Wife each made additional transfers of stock to Trust 1, Trust 2, Trust 3, and Trust 4 in Year 2. Husband filed a gift tax return for Year 2. Husband's gift tax return included an election to split gifts with Wife but no allocation of GST exemption. Wife did not file a gift tax return for Year 2.

In both Year 1 and Year 2, Husband and Wife relied upon a qualified tax professional to properly prepare their gift tax returns. The qualified tax professional inadvertently failed to prepare Wife's Year 2 gift tax return and to properly allocate each taxpayer's GST exemption to the Year 1 and Year 2 transfers to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7.

Husband and Wife have each requested extensions of time to make allocations of their respective GST exemption to the Year 1 and Year 2 transfers to the seven trusts. In addition, Husband has requested a ruling that the GST exemption allocated

on his Year 1 gift tax return is void to the extent that the allocation exceeds the amount necessary to obtain a zero inclusion ratio.

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), in effect at the time of the transfer, provided 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(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 § 2642(g)(1)(A).

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 on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband is 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 to Trust 1, Trust 2, Trust 3, and Trust 4. Husband should file a supplemental Form 709 for each year and should include a Notice of Allocation properly allocating the taxpayer's GST exemption to the transfers to the trusts. In accordance with § 26.2632(b)(2), any allocation of GST exemption made on Husband's gift tax return to Trust 5, Trust 6, or Trust 7 is void to the extent that the allocation exceeds the amount necessary to obtain a zero inclusion ratio.

In addition, Wife is granted an extension of time of 60 days from the date of this letter to allocate GST exemption to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 for the transfers in Year 1 and Year 2. Wife should file a Form 709 for Year 2 and a supplemental Form 709 for Year 1. Each Form 709 should include a Notice of Allocation properly allocating her GST exemption to the transfers to the trusts.

The allocations made by Husband and Wife will be effective as of the date of the transfers, and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated. Each trust's inclusion ratio will be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to the supplemental form 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 federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We are specifically not ruling on the gift tax value of the stock transferred to the trusts.

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 for § 6110 purposes

Copy of this Letter

cc: