

## 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:B04

PLR-164617-05

Date:

January 8, 2007

Re:

### Legend

Grantor	=
Spouse	=
Trust	=
Trustee	=
Accountant	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Child 1	=
Child 2	=
Child 3	=
\$X	=
\$Y	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Policy 1	=
Policy 2	=

Dear \_\_\_\_\_ :

This is in response to correspondence requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations and § 2632 of the Internal Revenue Code to elect not to have the automatic allocation rule of § 2632(c) to apply to a trust.

### Facts

On Date 1, Grantor established Trust, an irrevocable trust, for the benefit Spouse and their children, Child 1, Child 2, and Child 3. The trustee of Trust is Trustee. Trust owns insurance policies.

Pursuant to Part One, Article Second of Trust, during Grantor's lifetime, Trustee is to accumulate income and add any accumulated income to principal. If Spouse is living at Grantor's death, Trust further provides that one-half of the income is to be distributed to Spouse and one-half is to be distributed, per stirpes to Grantor's issue. Spouse is granted an inter vivos power to appoint Trust's income and a testamentary power to appoint Trust's principal to any one or more individuals in the class consisting of Grantor and Grantor's issue (as defined in Trust agreement). Upon Spouse's death, any remaining balance of Trust is to be distributed to Grantor's then living issue (as defined in the Trust agreement), per stirpes unless they are under age 45. If any issue has not attained the age of 45, their portion will be retained in trust. Income is to be distributed at the Trustee's discretion until an issue attains the age of 25. After an issue attains the age of 25, the trustee is to distribute all of the income to that issue, at least quarterly. Principal is to be distributed at the trustee's discretion for support, maintenance in reasonable comfort, health and education. When the issue turns thirty, Trustee is to distribute one-third of the balance of the trust. At the issue's thirty-fifth birthday, Trustee is to distribute one-half of the balance of the trust. When the issue reaches age 45 the trustee is to distribute the remaining principal and the trust terminates.

Part Two, Article V provides that, at the time of gift by the Grantor to Trust, Spouse has a right to withdraw \$X and Child 1, Child 2, and Child 3 each have a right to withdraw \$Y.

On Date 2, Trust purchased Policy 1 and on Date 3, Trust purchased Policy 2. In Years 1-8 Grantor made gifts to Trust. Since Year 3, Grantor and Spouse engaged Accountant to provide accounting and tax advice and to prepare tax returns. Grantor and Spouse believed that Accountant was preparing all necessary tax returns. Due to a miscommunication between Grantor and Accountant, Forms 709 United States Gift (and Generation-Skipping) Tax Returns were not filed for Years 1-8. Grantor and Spouse were unaware of the need to report gifts and make certain elections including the election to "split" gifts under § 2513. On Date 4, Grantor and Spouse filed Forms 709

for Years 2, 3, and 4. No Form 709 was filed for Year 1. Grantor and Spouse have not yet filed Forms 709 for Years 5, 6, 7, and 8. Grantor and Spouse intend to file the returns once they receive this private letter ruling from the Service.

Grantor and Spouse request that they be granted an extension of time under § 301.9100 with respect to transfers to Trust in Year 5, 6, 7, and 8 to make the election under § 2632(c)(5)(A)(i) not to have the automatic allocation rule of § 2632(c) apply to Trust.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip), reduced by the sum of certain federal estate tax or state death tax and charitable deductions.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons (I) before the date that the individual attains age 46, (II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or (III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46.

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have this subsection not apply to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

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), which was enacted into law on June 7, 2001.

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, 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 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 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 200150, 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.

A GST trust is defined in § 2632(c)(3)(B), in general, as any trust that could have a generation-skipping transfer. A trust is a GST Trust unless it meets one of the exceptions described in § 2632(c)(3)(B)(i) through (vi) where a sufficient possibility exists (based on the statutory criteria) that the trust corpus will not be distributed to lower generations. Based upon the facts submitted and the representations made, none of the exceptions in § 2632(c)(3)(B) apply to Trust and, accordingly, Trust is a GST Trust for purposes of § 2632(c).

Further, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor and Spouse are granted an extension of time of 60 days from the date of this letter to make the election out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i)(II) for the transfers to Trust in Years 5, 6, 7, and 8. Accordingly, Trust will not be treated as a GST trust within the meaning of § 2632(c).

The elections should be made on Supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 709. A copy is enclosed 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 taxpayer 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,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter