

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-130564-06
Date: January 4, 2007

LEGEND:

Year 1 =
Husband =
Wife =
Counsel =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Firm =

Dear :

This responds to your letter dated June 12, 2006, submitted on behalf of you and your husband's estate, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption to a trust.

FACTS

The facts submitted and the representations made are as follows. In Year 1, Husband and Wife created Trust for the benefit of their descendants. Under the provisions of Trust, there is a possibility that a GST may occur and none of the exceptions to the definition of "GST trust" in § 2632(c)(3)(B) are applicable.

Husband and Wife each made transfers to Trust in Years 1 and 2. After the death of Husband in Year 3, Wife made additional transfers to Trust in Years 3 through 5.

Beginning in Year 1, Husband and Wife retained the services of Firm to prepare their United States Gift (and Generation-Skipping Transfer) Tax Returns (Forms 709). Husband and Wife advised Firm of their intent to allocate GST exemption to any transfer they made to Trust so that Trust had an inclusion ratio of zero. Firm incorrectly advised that it was not necessary to file a Form 709 to effectively allocate GST exemption to the transfers to Trust in Year 1, Year 3, and Year 4. In preparing the Year 2 Forms 709 for Husband and Wife, Firm failed to attach Notices of Allocation allocating Husband's and Wife's respective GST tax exemption to the respective transfers. The Year 5 transfer was made after the effective date of P.L. 107-16 (which amended § 2632(c)), so GST exemption was automatically allocated to this transfer.

Wife and Husband's estate are requesting an extension of time pursuant to § 2642(g) and §§ 301.9100-1 and 301.9100-3, to allocate their GST exemption to their respective transfers to Trust made in Years 1, 2, 3 and 4, and are requesting that the GST exemption allocated to the transfers will be effective as of the date of each transfer.

Law and Analysis:

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 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

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 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000. See P.L. 107-16, § 561(a). Section 2632(c)(1), as amended, 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 portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term indirect skip means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 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(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2032(a) shall be deemed to be allocated as follows--(A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(b)(2) 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.

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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband's estate is granted an extension of time of sixty (60) days from the date of this letter to allocate Husband's available GST exemption to the transfers he made to Trust in Years 1 and 2. Wife is granted an extension of time of sixty (60) days from the date of this

letter to allocate Wife's available GST exemption to the transfers she made to Trust in Years 1 through 4. The allocations will be effective as of the date of transfer, and will be based on the full value of the assets transferred to Trust on the date of transfer. The allocations should be made on individual Forms 709 for each year in which a transfer was made and the Forms 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Wife does not need an extension of time to allocate GST exemption to her transfer to Trust in Year 5 because Trust is considered a "GST Trust" within the meaning of § 2632(c)(3)(B) and Wife's transfer was made after the effective date of P.L. 107-16; accordingly, GST exemption was automatically allocated to the transfer in Year 5.

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. Specifically, no opinion is expressed or implied as to the value for Federal transfer tax purposes of any gifts Husband and Wife made to Trust.

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.

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.

Sincerely,

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

Enclosure (0)