

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-120232-06

Date:

April 17, 2007

Re:

LEGEND:

Husband -

Wife -

Trust A -

Trust B -

Date 1 -

Date 2 -

Years 1-4 -

Years 6-15 -

X -

Y -

CPA 1 -

CPA 2 -

Law Firm -

State -

Dear :

This is in response to a letter dated March 15, 2006, submitted by your authorized representative, requesting rulings under § 2642(g) of the Internal Revenue

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Code and § 301.9100 of the Procedure and Administration Regulations with respect to transfers to two trusts.

Husband and Wife reside in State. On Date 1, Husband established an irrevocable trust, Trust A, for the primary benefit of his children and descendants. On Date 2, Husband established an irrevocable trust, Trust B, also for the primary benefit of his children and descendants. Date 1 and Date 2 are prior to September 25, 1985. Transfers to Trusts A and B in years prior to 1985 were not subject to the provisions of chapter 13. See § 26.2601-1(b)(1) of the Generation-Skipping Transfer Tax Regulations.

Husband transferred X to Trust A in Years 1 and 2; cash to Trust A in Year 7, and Y to Trust A in Years 8-15. Husband transferred X to Trust B in Years 1-4 and Years 6 and 7. Years 1-4 and 6-15 are after September 25, 1985, and, accordingly, are subject to the provisions of chapter 13.

Husband and Wife engaged CPA 1 as their principal tax advisor for the Years 1-13 and relied upon CPA 1 to advise them on tax planning issues including gift and generation-skipping transfer tax issues. CPA 1 prepared Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Husband and Wife for the Years 1-4 and Years 6-7 transfers to Trusts A and B. Husband and Wife elected to split gifts under § 2513 on the Forms 709 for those years. CPA 1 inadvertently failed to allocate any of Husband's and Wife's GST exemption to Trusts A and B on the Forms 709 for those years.

CPA 1 did not prepare Forms 709 for Years 8-13 because Husband and Wife did not request CPA 1 to do so. Husband and Wife did not make such a request because they had been advised by Law Firm, engaged by them to prepare other tax returns, that the transfers to Trust A during those years were subject to the annual exclusion rule of § 2503(b). Because no Forms 709 were filed for the Years 8-13, no allocations of Husband's and Wife's GST exemptions were made to Trust A. Further, Husband and Wife did not elect to split the gifts made to Trust A during those years.

Husband and Wife retained CPA 2 in Year 13 as their principal tax preparer and advisor. Based upon the prior advice of Law Firm, Husband and Wife did not provide information to CPA 2 regarding the Years 13-15 transfers to Trust A. However, upon a review of Husband's and Wife's Forms 709 for a later year, CPA 2 discovered that Husband and Wife did not allocate his or her GST exemption to the transfers to Trusts A and B for Years 1-4, and 6-15. CPA 2 advised Husband and Wife to submit a private letter ruling request seeking relief to do so.

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Wife requests (i) an extension of time to allocate her GST exemption to Trust A for Years 1, 2, 7, and Years 14-15 and to Trust B in Years 1-4 and 6-7, and (ii) that such allocations are to be based on the value of the property transferred to Trusts A and B on the date of the transfers.

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), as in effect for the tax years at issue, provided that, for purposes of determining the GST tax, 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2652(a) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2632(a) 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 26.2632-1(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(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 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)) and such allocation shall be effective on the date of such transfer.

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Section 2642(g)(1)(A) provides 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).

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. See Notice 2001-50, 2001-2 C.B. 189.

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 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 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Husband and Wife elected to split gifts under § 2513 for the Years 1-4 and 6-7 transfers to Trusts A and B. Under § 26.2652-1(a)(4), Wife is treated, for GST purposes, as the transferor of one-half of the entire value of the property transferred by Husband, regardless of the interest Wife is

actually deemed to have transferred under § 2513. For GST purposes, Husband and Wife are each treated as the transferor of one-half of the value of the entire property transferred to Trusts A and B in Years 1-4 and 6-7. The same rule will apply if Husband and Wife elect to split gifts on the original Forms 709 for Years 14-15. Therefore, Wife is granted an extension of time of 60 days from the date of this letter to allocate her GST exemption to Trust A for Years 1, 2, 7, and Years 14-15 and to Trust B in Years 1-4 and 6-7. The allocations will be effective as of the date of the transfers, and the value of the transferred property to Trusts A and B as of the date of the original transfers to the trusts will be used in determining the amount of Wife's GST exemption to be allocated to Trusts A and B. Trusts A and B's inclusion ratio will be determined under §§ 2642(a) and 2642(b).

Wife should make the allocations on supplemental Forms 709 for Years 1-4 and 6-7 and on original Forms 709 for Years 14-15. Each form should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the form.

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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter