

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200751021**

Release Date: 12/21/2007

Index Number: 2632.00-00, 9100.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-155007-06

Date:  
August 15, 2007

In Re:

**Legend:**

- Decedent =
- Spouse =
- Son =
- Daughter 1 =
- Daughter 2 =
- Accountant =
- Attorney =
- Trust 1 =
  
- Trust 2 =
  
- Trust 3 =
- Trust 4 =
- Partnership =
- Date 1 =
- Date 2 =
- Date 3 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- X =
- Y =
- Z =

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

This is in response to a letter dated November 27, 2006, and subsequent correspondence, submitted by your personal representative requesting rulings under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted and the representations made are as follows. Decedent and Spouse were married to each other in the years at issue and had four children, three of which are relevant to this ruling request, Son, Daughter 1, and Daughter 2.

In Year 1 (prior to 1985), Spouse created Trust 1. Trust 1 establishes four separate trusts, one for the benefit of each of the couple's four children. Trust 1 has generation-skipping transfer (GST) tax potential. In Year 2, Decedent created Trust 2. Trust 2 is Decedent's revocable trust. Trust 2 has GST tax potential.

Decedent owned an X percent interest in Partnership, a general partnership. On Date 1, in Year 3, Decedent transferred Y percent interests in Partnership to each of the trusts established for Daughter 1 and Daughter 2 under Trust 1 (Daughter 1's Year 1 Trust and Daughter 2's Year 1 Trust). Decedent informed Accountant of the transfers. Accountant did not advise Decedent and Spouse to file Year 3 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, because he believed that the gifts qualified for the annual gift tax exclusion under § 2503(b).

In Year 4, Decedent created Trust 3 and Trust 4. Trust 3 was established for the benefit of Daughter 1 and her issue. Trust 4 was established for the benefit of Daughter 2 and her issue. Trust 3 and Trust 4 have GST tax potential. On Date 2, in Year 5, Decedent transferred a Z percent interest in Partnership to Trust 3. Due to miscommunications, Decedent inadvertently failed to inform Accountant of the transfer. Consequently, Accountant did not prepare Decedent's and Spouse's Year 5 Forms 709. Sometime thereafter, pursuant to the authority granted to the trustees of Trust 1, Trust 3, and Trust 4, Daughter 1's Year 1 Trust and Trust 3 were merged, and Daughter 2's Year 1 Trust and Trust 4 were merged.

On Date 3, Decedent died and Decedent's assets were distributed to Trust 2. Subsequent to Decedent's death, Attorney discovered that Year 3 and Year 5 Forms 709 reporting the Date 1 and Date 2 gifts were not filed. As a result, no GST exemption has been allocated to these gifts.

It has been represented that the GST exemptions of Spouse and Decedent have not been affirmatively or automatically allocated to any transfers to date, and are available for allocation. The Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate is not yet due.

Spouse, individually, and Son, as trustee of Trust 2, Trust 3, and Trust 4, are requesting an extension of time pursuant to §§ 2642(g), 301.9100-1, and 301.9100-3, to allocate

the available GST exemptions of Spouse and Decedent to the Date 1 and Date 2 transfers, and that the GST exemptions allocated to the transfers will be effective as of the date of each transfer. Spouse and Son, as trustee of the aforementioned trusts, intend to treat the transfers on Date 1 and Date 2 for gift tax purposes as made one-half by Decedent and one-half by Spouse pursuant to § 2513.

#### Law and Analysis:

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his 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. For purposes of this section, an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

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 26.2601-1(a)(1) of the Generation-Skipping Transfer Tax Regulations provides that, except as otherwise provided in this section, the provisions of chapter 13 apply to any GST (as defined in § 2611) made after October 22, 1986.

Section 26.2601-1(b)(1) provides that the provisions of chapter 13 do not apply to any GST under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any GST under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(iv) provides that if an addition is made after September 25, 1985, to an irrevocable trust which is excluded from chapter 13 by reason of § 26.2601-1(b)(1), a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13. If an addition is made, the trust is thereafter deemed to consist of two portions, a portion not subject to chapter 13 (the non-chapter 13 portion) and a portion subject to chapter 13 (the chapter 13 portion), each with a separate inclusion ratio (as defined in § 2642(a)). The non-chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985. The applicable fraction (as defined in § 2642(a)(2)) for the non-chapter 13 portion is deemed to be 1 and the inclusion ratio for such portion is 0. The chapter 13 portion of the trust represents the value of all additions made to the trust after September 25, 1985. The inclusion ratio for the chapter 13 portion is determined under § 2642. This paragraph requires separate portions of one trust only for purposes of determining inclusion ratios.

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. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) (in effect at the time of the transfer) 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) 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 or is deemed to be made under § 2632(b)(1) or (c)(1) – (A) 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 ETIP, its value at the time of the close of the ETIP, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

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

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

Section 26.2654-1(a)(2) provides that if there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13. Treatment of a single trust as separate trusts under this paragraph does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts unless otherwise expressly provided in the governing instrument.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2624(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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the 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 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)(ii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because of intervening events beyond the taxpayer's control.

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. Therefore, Spouse and Son are granted an extension of time of sixty (60) days from the date of this letter to allocate the available GST exemptions of Spouse and Decedent to the Date 1 and Date 2 transfers. The allocations should be made on Forms 709 for Year 3 and Year 5 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Based upon the facts submitted and the representations made, because Spouse and Decedent were married to each other in Year 3 and Year 5, we conclude that on the Year 3 and Year 5 Forms 709, Spouse and Decedent are permitted to elect to treat gifts made by either as made by both in Year 3 and Year 5. If the requirements for signifying consent under § 2513(b) are satisfied in each of these years, the transfers in these years will be considered as made one-half by Decedent and one-half by Spouse.

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 regarding the fair market value for Federal transfer tax purposes of any asset transferred by Decedent or includible in Decedent's gross estate.

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

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

Enclosures: Copy for § 6110 purposes