

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-148954-08

Date: APRIL 27, 2009

Re:

LEGEND:

Donor =

Spouse =

A =

B =

Trust =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Company stock =

\$u =

\$v =

\$w =

\$x =

\$y =

Dear :

This responds to your authorized representative's letter of November 7, 2008, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping (GST) exemption.

The facts and representations submitted are as follows. Donor created an irrevocable trust (the "Trust") on Date 1 to be held, in part, for the benefit of her descendants, and

her descendants' spouses. On Date 2 (in Year 1), Donor transferred shares of Company stock valued at \$u to the Trust. Donor relied on A, a certified public accountant, for tax advice and to prepare and file the Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) reporting the transfer. The return was timely filed, but GST exemption was not allocated to the transfer.

On Date 3 (in Year 2), Donor transferred to the Trust a life insurance policy valued at \$v. Donor relied on B, a certified public accountant, for tax advice and to prepare the gift tax return reporting this transfer. B discovered that Donor had not allocated GST exemption to the transfer of shares on the return filed for Year 1. B advised Donor to make a late allocation on the return to be filed for Year 2.

Donor timely filed the return for Year 2 and reported her transfer of the policy. She allocated GST exemption of \$v to that transfer. In addition, she made a late allocation of her available GST exemption of \$x to the shares transferred in Year 1. At the time of the late allocation, the value of the shares had increased to \$w, which was \$y greater than the \$x of GST exemption available for allocation. As a result, the Trust had an inclusion ratio of 0.2645 after the allocation.

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 generally 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 under § 2631 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.

In Year 1, § 2631(a) provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.¹ Section 2631(b) provides that any allocation under subsection (a) once made, shall be irrevocable.

¹ Section 2631(a) currently provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(c) provides that, for purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under section 2010(c) for such calendar year.

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) of the Generation-Skipping Transfer Tax Regulations 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, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of the property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of the transfer.

Section 2642(g)(1)(A) provides, in part, 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.

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. For purposes of determining whether to grant relief, the time for making the allocation 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 is 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) 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 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. Accordingly, Donor is granted an extension of time of 60 days from the date of this letter to allocate GST exemption to the transfer of Company shares, as reported on the gift tax return filed for Year 1. The allocation will be effective as of the date of the transfer, and the value of the transfer for gift tax purposes will be used in determining the amount of GST exemption to be allocated with respect to it.

The late allocation Donor's GST exemption on the return filed for Year 2 is treated as ineffective because, assuming an allocation of Donor's GST exemption is made pursuant to the relief granted above, the allocation will be deemed timely. Thus, assuming Donor has sufficient available GST exemption and that GST exemption is allocated to the transfer of Company shares pursuant to the relief granted herein, then immediately prior to the late allocation, the Trust will be deemed to have a zero inclusion ratio for GST tax purposes.

The allocation should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return filed for Year 1, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709.

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.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes