

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-117349-17

Date:
November 27, 2017

Re:

LEGEND
Husband =

Wife =

Trusts =

Accounting Firm =
Date 1 =
Date 2 =
Date 3 =
Year 1 =
Year 2 =
g =
r =
s =
t =
u =

Dear :

This letter responds to your personal representative's letter of May 17, 2017, and other correspondence, requesting a ruling regarding the effect of gift splitting under § 2513 of the Internal Revenue Code on certain transfers.

The facts and representations submitted are summarized as follows.

On Date 1 in Year 1 (a date after August 5, 1997 and before January 1, 2001), Husband created four irrevocable trusts (Trusts) for his four children. Each child is the primary beneficiary of a separate trust for the benefit of herself and her children.

Under Article First, Paragraph A of each trust, the income of that trust is to be paid to the child for whom the trust was created. On the child's death, the principal is to be held in further trust and distributed outright to her children upon their attaining age 35.

On Date 1, Husband transferred \$g to each of the four Trusts. In total, Husband transferred \$r to Trusts on Date 1.

Accounting Firm prepared Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Husband and Wife. On his and her respective timely filed Form 709, Husband and Wife signified their consent to treat their gifts in Year 1 as having been made one-half by each spouse under § 2513. Nevertheless, Husband's Form 709 reported his portion of the total transfer to Trusts to be \$s, which is three-quarters (rather than one-half) of \$r. Wife's Form 709 reported her portion of the total transfer to Trusts to be \$q, which is one-quarter (rather than one-half) of \$r. No amount of Husband's or Wife's available GST exemption was allocated to the transfers to Trusts on the Year 1 Forms 709.

Several years later, Accounting Firm realized that no GST exemption had been allocated to the transfers to Trusts in Year 1. Accounting Firm advised Husband of the ability to make a late allocation of GST exemption to the Date 1 transfers to Trusts. Accounting Firm prepared Husband's Year 2 Form 709 to include the late allocation of GST exemption to the Date 1 transfers to Trusts. On Husband's Year 2 Form 709, Husband made a late allocation of his available GST exemption to the Date 1 transfers to Trusts. The late allocation of Husband's GST exemption erroneously allocated an amount equal to one-hundred percent of the value of the Date 1 transfers to Trusts (such value determined as of the effective date of the allocation). The notice of allocation attached to Husband's Year 2 Form 709 stated that, as a result of the late allocation, the inclusion ratio of Trusts was zero. Wife was not advised to make a late allocation of GST exemption to Wife's portion of the Date 1 transfers to Trusts.

The period of limitations under § 6501 has expired with respect to Husband's Forms 709 filed for Year 1 and Year 2.

You have requested we rule that because the period for assessment of gift tax under § 6501 has expired for Husband's Year 1 Form 709, Husband is treated as the transferor of \$s, the amount reported for Husband's portion of the Date 1 transfers to Trusts on Husband's Year 1 Form 709.

LAW AND ANALYSIS

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual, resident or nonresident. Section 2511(a) provides that subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2504(c) provides that if the time has expired under § 6501 within which a tax may be assessed under chapter 12 on the transfer of property by gift made during a preceding calendar period, the value thereof shall, for purposes of computing the tax under chapter 12, be the value as finally determined (within the meaning of § 2001(f)(2)) for purposes of chapter 12.

Section 25.2504-2(b) of the Gift Tax Regulations provides that if the time has expired under § 6501 within which a gift tax may be assessed under chapter 12 on the transfer of property by gift made during a preceding calendar period, and the gift was made after August 5, 1997, the amount of the taxable gift or the amount of the increase in taxable gifts, for purposes of determining the correct amount of taxable gifts for the preceding calendar periods is the amount that is finally determined for gift tax purposes and such amount may not be thereafter adjusted. The rule in this paragraph applies to adjustments involving all issues relating to the gift including valuation issues and legal issues involving the interpretation of the gift tax law.

Section 2513(a)(1) provides, generally, that a gift made by one spouse to any person other than the donor's spouse is considered, for purposes of the gift tax, as made one-half by the donor and one-half by the donor's spouse.

Section 25.2513-1(b)(5) provides, in part, that the consent may not be applied only to a portion of the property interest constituting such gifts. If the consent is effectively signified on either the husband's return or the wife's return, all gifts made by the spouses to third parties (except as described in § 25.2513-1(b)(1) through (4)), during the calendar period will be treated as having been made one-half by each spouse.

In this case, Husband and Wife elected to treat their Year 1 gifts (including \$r, the total amount transferred to Trusts) as made one-half by each spouse. However, Husband's Form 709 incorrectly reported three-fourths of \$r (\$s) as his portion of the gift, and Wife's Form 709 incorrectly included one-fourth of \$r (\$g) as her portion of the gift.

Under § 2513, Husband's Year 1 transfers to Trusts, totaling \$r, are considered as made one-half by Husband and one-half by Wife. However, under § 2504(c) and § 25.2504-2(b), because the time has expired under § 6501 within which a gift tax may be assessed, the amount of the taxable gift is the amount that is finally determined for gift tax purposes and may not thereafter be adjusted. In this case, the disproportionate

gift split reported on Husband's and Wife's respective Forms 709 represents the amounts that are finally determined for gift tax purposes.

Consequently, for gift tax purposes, Husband is treated as transferring \$s to Trusts on Date 1, and Wife is treated as transferring \$g to Trusts on Date 1.

However, under § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations, Husband is regarded for GST tax purposes as the transferor of one-half of the total value of the property transferred to Trusts on Date 1, which is equal to \$u, regardless of the interest Husband is treated as transferring under § 2513 for gift tax purposes. Accordingly, Husband's late allocation of GST exemption to Trusts on the Year 2 Form 709 is effective only to the one-half portion of the property transferred to Trusts, of which he is considered the transferor for GST tax purposes. See § 2631(a); § 26.2632-1(b)(4)(i) (an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero).

Except as expressly provided herein, we express 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 taxpayers requesting it. Section 6110(k)(3) of the Code 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 representatives.

The ruling contained in this letter is 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,

Karlene Lesho

Karlene Lesho
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes

cc: