

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200625013**

Release Date: 6/23/2006

Index Number: 2601.00-00, 9100.00-00

Person To Contact:

, ID No.

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In Re:

Refer Reply To:

CC:PSI:B04 – PLR-142534-05

Date: JANUARY 25, 2006

Legend:

Year 1 =
Husband =
Wife =
Date 1 =
Trust 1 =

Trust 2 =

Attorney =
Law Firm =
a =
Date 2 =
Accounting Firm 1 =
Year 2 =
Accounting Firm 2 =
Year 3 =

Dear _____ :

This is in response to a letter from your authorized representative dated August 9, 2005, and subsequent submissions, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Wife's generation-skipping transfer (GST) exemption to transfers to Trusts.

The facts and representations submitted are summarized as follows: In Year 1, Husband and Wife engaged Attorney from Law Firm to prepare their estate planning documents. On Date 1, on the advice of Attorney, Husband established irrevocable trusts (Trust 1 and Trust 2) for the benefit of his two daughters and their descendants.

in Year 1, Husband transferred \$a in cash to each trust. No additions have been made to Trust 1 or Trust 2 since Year 1, and no distributions have been made from either trust. However, on Date 2, the primary beneficiary of Trust 1 died, resulting in a taxable termination of Trust 1 for GST purposes.

Accounting Firm 1 prepared and filed Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return for the transfers made to Trusts 1 and 2 in Year 1. The Forms 709 reflected Husband's and Wife's consent to treat the transfers as being made one-half by each spouse pursuant to § 2513. Accounting Firm 1 failed to allocate Husband's and Wife's GST exemptions to the portions of the transfers attributable to each spouse, respectively. In Year 2, Husband and Wife began using the tax and personal financial planning services of Accounting Firm 2. In Year 3, in connection with Accounting Firm 2's ongoing tax planning for Husband and Wife, Accounting Firm 2 reviewed the gift tax returns filed for Year 1 by Husband and Wife and discovered the failure to allocate the GST exemption of either spouse to the Year 1 transfers to the trusts.

Wife has requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate her GST exemption to the transfers made to Trust 1 and Trust 2 in Year 1.

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.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, 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 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 such 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 such transfer.

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. 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, 2001-34 I.R.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, Wife is granted an extension of time of 60 days from the date of this letter to allocate her available GST exemption to the Year 1 transfers to Trust 1 and Trust 2. The allocations will be effective as of the date of the transfers to Trusts 1 and 2. The amount of the GST exemption to be allocated is \$a, without any reduction for the gift tax annual exclusion amount under § 2503(b).

The allocation should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return 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. A copy is enclosed for this purpose.

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,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter