

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

In Re:

Refer Reply To:  
CC:PSI:B04  
PLR-134683-04  
Date: JANUARY 19, 2005

**LEGEND:**

- Decedent =
- Wife =
- Estate =
- Trust =
  
- Son =
- Daughter =
- Date 1 =
- Date 2 =
- Year 1 =
- Year 2 =
- Year 3 =
- Accounting Firm 1 =
- Accounting Firm 2 =
- X =
- Y =
- Z =

Dear :

This is in response to your letter dated June 24, 2004, requesting an extension of time under section 2642(g) of the Internal Revenue Code and section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Decedent's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date 1 (during Year 1) Decedent established Trust, an irrevocable trust.

Article 2.01 of Trust provides, in part, that each contribution to Trust is to be divided into separate shares for the lineal descendants of Decedent who are living at the time of such contribution, per stirpes. Each share is to be held as a separate trust; provided, however, that if a separate trust already exists for the benefit of a beneficiary receiving a share of the contribution, such share is to instead augment the existing trust; and provided, further, if at the time a share is created for a lineal descendant of a child of Decedent, such lineal descendant has reached the age for outright withdrawal of part or all of the trust assets, the required notice of withdrawal is to be given to such lineal descendant of Decedent's child immediately.

Article 2.02 provides that while each trust for a child of Decedent is in existence, the Trustee is to pay all of the net income to Decedent's child quarter-annually or more often.

Article 2.03 provides that while each trust for a lineal descendant of a child of Decedent is in existence, the Trustee may pay such amounts of net income and principal to such lineal descendant as the Trustee is to determine to be appropriate in accordance with the provisions set forth in Article 3.03. When such lineal descendant has reached age 25, he or she shall be entitled to withdraw one-third of the trust assets; when such lineal descendant has reached age 30, he or she shall be entitled to withdraw one-half of the remaining trust assets; and when such lineal descendant has reached age 35, he or she shall be entitled to withdraw all of the remaining trust assets. Any share of trust assets which such lineal descendant becomes entitled to withdraw shall thereafter be accounted for and held separately from the share of assets not then withdrawable. The Trustee shall provide such lineal descendants with written notice of withdrawal rights within 30 days of the date they come into effect, and such lineal descendant is to exercise his or her withdrawal rights in writing.

Article 2.04 provides, in part, that if a lineal descendant of Decedent dies before becoming entitled to receive all of the assets of the separate trust for such lineal descendant, the beneficiary is to have the power to appoint to such persons (including his or her own estate), in such amounts and in such proportions as the beneficiary is to have provided by specific reference to this general power of appointment in his or her will, the smallest portion of the trust assets remaining at his or her death which, if subject to the general power of appointment, will minimize the aggregate estate and GST taxes. In addition, the beneficiary is to have the power to appoint any trust assets remaining at his or her death that are not subject to the foregoing general power of appointment to one or more of such beneficiary's lineal descendants, if any, or if there are none, one or more of Decedent's lineal descendants, in such amounts and proportions as the beneficiary is to have provided in his or her will. Any assets not appointed pursuant to the beneficiary's general or limited powers of appointment is to be distributed among the beneficiary's then living lineal descendants, per stirpes.

Article 3.03 provides, in part, that in administering any trust established under this instrument, the Trustee is to take Decedent's goal to make the lives of Decedent's children and their lineal descendants more financially secure. To achieve the goal, the Trustee is to exercise his authority to make payments to a beneficiary in such amounts

as the Trustee determines to be appropriate to provide for the health, support, maintenance in reasonable comfort, and education of the beneficiary, taking into account the beneficiary's accustomed manner of living and any other resources of the beneficiary available for such needs.

Article 3.04 provides that if any trust created by Trust is not terminated earlier, it shall terminate 21 years after the death of the last to die of the beneficiaries of any trust administered under the instrument in being at the time of the execution of this instrument. In case of termination under this provision, the remainder of the trust estate is to be distributed and paid over free of trust to the person or persons then eligible to receive the income therefrom, in such amounts and proportions as the Trustee, in the Trustee's sole discretion, is to determine to approximate Decedent's intention with regard to the distribution of the trust in question.

In Year 1, Year 2, and Year 3, Decedent and Wife (the Taxpayers) made transfers to Trust. No other transfers have been made to Trust.

Decedent and Wife each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return (gift tax return), for Year 1, Year 2, and Year 3. The Taxpayers elected to treat the gifts as made one-half by each spouse under section 2513. The Taxpayers retained Accounting Firm 1 to prepare the Year 1 gift tax returns and Accounting Firm 2 (the successor to Accounting Firm 1) to prepare the Year 2 and Year 3 gift tax returns. However, with respect to the Year 1, Year 2, and Year 3 gift tax returns, the Taxpayers did not effectively allocate their available GST exemption to the transfer to Trust nor did they attach a Notice of Allocation of GST exemption to their respective returns, and did not otherwise make an effective allocation of GST exemption.

Decedent died on Date 2. Decedent was survived by Wife, Son, and Daughter.

After Decedent's death, Accounting Firm 2 undertook a comprehensive review of the Taxpayers' gift tax returns and GST exemption allocations. At that time, it was discovered that the returns did not comply with all of the technical requirements for making a proper allocation of GST exemption with respect to Trust.

You have requested an extension of time under section 2642(g) and sections 301.9100-1 and 301.9100-3 to make a timely allocation of GST exemption under section 2632 with respect to Decedent's transfers to Trust in Years 1, 2, and 3. Decedent's estate tax return (Form 706) was filed contemporaneously with the request for an extension under section 301.9100. On Schedule R, the amount of GST exemption allocated by the executor takes into account and is reduced by the amount of exemption to be allocated if the request for an extension is granted.

Section 2501 imposes a tax on the transfer of property by gift by an individual, resident or nonresident. Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her

spouse shall, for gift tax purposes, be considered as made one-half by donor spouse and on-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST), as defined in sections 2611 through 2613, made after October 26, 1986, by a “transferor” to a “skip person.”

Under section 2652(a)(1) and section 26.2652-1(a)(1), generally, the transferor for purposes of the GST tax is the individual with respect to whom the property was last subject to Federal estate or gift tax. Section 2652(a)(2) and section 26.2652-1(a)(4) provide that, if, under section 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 section 2513.

Under section 2602, the amount of the tax imposed under section 2601 is equal to the taxable amount multiplied by the applicable rate. Section 2641(a) provides that the “applicable rate” with respect to any generation-skipping transfer, is the product of the maximum federal estate tax rate multiplied by the inclusion ratio with respect to the transfer. Under section 2642(a)(1), in general, the inclusion ratio with respect to any property subject to a generation-skipping transfer is the excess of one over the applicable fraction determined for the trust from which the transfer is made. Under section 2642(a)(2), the applicable fraction with respect to a trust is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust, and the denominator of which is, generally, the value of the property transferred to the trust, with certain specified adjustments.

Under section 2631(a), as in effect for the years at issue in the present case, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$ 1,000,000 (adjusted for inflation under section 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 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under section 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 2642(b)(1) provides that, except as provided in section 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 section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1) the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, 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 section 2642(b)(1) or (2), and an election under section 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

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.

Notice 2001-50, 2001-2 C.B. 189, provides that under section 2642(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 section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 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 sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3.

Under section 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 section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 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 to advise the taxpayer to make, the election.

Based on the facts submitted and representations made in this case, we conclude that the standards of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make a timely allocation of GST exemption under section 2632 with respect to Decedent's transfers to Trust in Years 1, 2, and 3, in the amount of \$x, \$y, and \$z respectively, is granted until 60 days after the date of this letter. The inclusion ratio of Trust will be determined based on the date of gift values of the property transferred to Trust and the amount of GST exemption allocated with respect to those transfers.

The allocation of GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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.

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.

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,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter