

**: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:

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PLR-144125-04  
Date:  
February 15, 2005

Legend:

Date 1 =  
Taxpayer =  
1  
Taxpayer =  
2  
Trust =  
X =  
Year 1 =  
Year 2 =

Dear :

This is in response to your authorized representative's letter dated August 20, 2004, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer 1 and Taxpayer 2 established Trust, an irrevocable trust for the benefit of their children and descendants.

Article I of Trust provides that the trustee shall divide the property comprising the initial corpus of the trust into three shares of equal value and shall hold, administer and dispose of each share in a separate trust, one trust for each of Taxpayer 1 and Taxpayer 2's children. Each of Taxpayer 1 and Taxpayer 2's children shall be the initial income beneficiary of their respective trust.

Article I, paragraph 1.2 provides, generally, that during the income beneficiary's life, the trustee may pay all or part of the income or corpus of the trust as the trustee shall deem proper for the support and maintenance of the income beneficiary. After the income beneficiary has attained the age of forty years, the trustee shall deliver the

assets of the trust as the income beneficiary shall, from time to time, appoint in writing to his or her spouse and then living descendants. On the death of the income beneficiary, the trustee shall continue to hold or pay the corpus of the trust as the income beneficiary shall appoint by his or her will to any person or organization, other than the income beneficiary, the income beneficiary's estate, the income beneficiary's creditors, or the creditors of the income beneficiary's estate. In default of the exercise of such power of appointment, the trustee shall allocate the corpus of the trust, per stirpes, among the then living descendants of the income beneficiary, and if there are none, per stirpes, among the then living descendants of the income beneficiary's nearest lineal ancestor who is Taxpayer 1 or Taxpayer 2 or a descendant of Taxpayer 1 or Taxpayer 2 and has descendants then living.

Also on Date 1, Taxpayer 1 and Taxpayer 2 funded Trust with assets with a total reported value of \$x. Taxpayer 1 and Taxpayer 2 relied on their accountant to prepare and file Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax returns") for Year 1. Taxpayer 1 and Taxpayer 2 each elected under § 2513 to treat the gifts made by them to third parties during the calendar year as made one-half by each of them. Taxpayer 1 and Taxpayer 2's transfer to Trust was reported on the Year 1 gift tax returns, however, due to an oversight, no allocation of their respective GST exemptions was made for the transfer made to Trust.

In Year 2, Taxpayer 1 and Taxpayer 2 made additional transfers to Trust. In preparing gift tax returns to report the Year 2 transfers to Trust, it was discovered that none of Taxpayer 1's or Taxpayer 2's respective GST exemptions had been allocated to Trust for the transfer made in Year 1.

Taxpayer 1 and Taxpayer 2 have requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer 1's and Taxpayer 2's respective GST exemptions with respect to the Year 1 transfer to Trust; and (2) that if relief is granted and if such allocations are made, Trust will have an inclusion ratio of zero as of Date 1.

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 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 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)) that 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 § 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)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. 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 with respect to the trust.

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) 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 estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and 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 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 § 2642(b)(1) or (2), and an election under § 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 § 2642(g)(1), which was enacted into law on June 7, 2001.

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 § 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 generation-skipping 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 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) 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. Therefore, Taxpayer 1 and Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to make allocations of Taxpayer 1's and Taxpayer 2's respective available GST exemptions, with respect to the Year 1 transfer to Trust. The allocations will be effective as of the date of the transfer, and the gift tax value of the transfer to Trust will be used in determining the amount of GST exemption to be allocated to the trust. If allocations of GST exemption are made pursuant to the grant of relief in this letter ruling and provided the amount of GST exemption allocated to Trust is equal to the gift tax value of the transfer to Trust on Date 1, Trust will have an inclusion ratio of zero as of Date 1.

These allocations should be made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709. Copies are 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. In addition, we express or imply no opinion regarding the value of the property transferred to Trust.

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

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,

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

Enclosures

Copy for § 6110 purposes  
Copies of letter

cc: