

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:4  
PLR-132314-05  
Date: NOVEMBER 14, 2005

Re:

Legend:

Wife =  
Husband =  
Daughter =  
Trust =

Trustee =  
Date 1 =  
Date 2 =  
\$X =  
\$Y =  
Date 3 =  
Date 4 =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =  
Year 6 =  
Year 7 =  
Year 8 =  
Year 9 =  
Year 10 =

Dear :

This is in response to your submission dated June 9, 2005, on behalf of Husband and Wife (Settlors), requesting an extension of time under § 301.9100-3 of the

Procedure and Administration Regulations and 2642(g) of the Internal Revenue Code to allocate Husband's and Wife's GST exemption to Trust.

The facts and representations submitted are summarized as follows: Trust was created on Date 1 by Husband and Wife as Settlers, for the benefit of Daughter and Daughter's descendants. Trustee is currently serving as trustee.

In each of Year 1, Year 2, Year 3, Year 5, Year 6, Year 7, Year 8, and Year 9, Husband and Wife each transferred \$X to Trust. It is represented that these transfers qualified for the gift tax annual exclusion under section 2503(b), and therefore, federal gift tax returns were not filed reporting the transfers. Thus, no GST exemption was allocated with respect to these transfers.

In Year 4, Husband transferred \$Y to Trust. It is represented that a United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) was filed for Husband reporting Husband's Year 4 transfer to Trust. The return was timely filed in Year 5. Husband and Wife did not elect to treat the transfer as made one-half by each under section 2513. It is represented that CPA did not attach a Notice of Allocation of GST exemption to the return.

It is represented that, to date, Husband and Wife have made no allocations of their available GST exemption for any of the Year 1 through Year 9 lifetime transfers made to Trust. Further, it is represented that no distributions from Trust have been made to any beneficiary of Trust. Daughter died in Year 10. After the death of Daughter, no beneficiary of Trust was a non-skip person. Accordingly, upon Daughter's death a taxable termination under section 2612(a)(1)(A) occurred.

You have requested the following rulings:

1. That an extension of time under section 301.9100-3 of the Procedure and Administration Regulations and section 2642(g) be granted to Husband and Wife to allocate their GST exemptions in connection with their transfers to Trust in Years 1-9.
2. That the allocations of exemptions be effective as of the date of each transfer to Trust.
3. That such allocations be based on the value of the property at the date of each transfer to Trust.
4. That the allocations may be made for a period of 60 days following the approval and issuance of a favorable ruling.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under section 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip, made by a transferor.

Under section 2612(a)(1), a “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 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 section 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Under section 2631(a), as in effect for the years at issue here, 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)) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 26.2632-1(b)(2)(i) 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.

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 the Federal estate or gift tax.

Section 2642(b)(1) provides that, except as provided in section 2642(f), if the allocation of the GST exemption to any transfer 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)).

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 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.

Under section 301.9100-1(c), 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 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 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. Notice 2001-50, 2001-2 C.B.189, 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 section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

In accordance with section 2642(g)(1)(B) and Notice 2001-50, 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.

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 has acted reasonably and in good faith, and the grant of 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 section 301.9100-3 have been satisfied. Accordingly, Husband and Wife are each granted an extension of time until 60 days after the date of this letter to make allocations of their respective GST exemption to their respective Year 1, Year 2, Year 3, Year 5, Year 6, Year 7, Year 8, and Year 9 transfers to Trust in the amount of \$X. In addition, Husband is granted an extension of time until 60 days after the date of

this letter to make an allocation of GST exemption with respect to Husband's Year 4 transfer in the amount of \$Y to Trust.

The allocations, once made, will be effective as of the respective date of each transfer to Trust. In addition, the inclusion ratio of Trust will be determined based on the value of the transferred property on the date of each transfer to Trust and the amount of GST exemption allocated with respect to each transfer.

The allocations for Years 1-3 and Years 5-9 should be made on Forms 709 to be filed by Husband and Wife, respectively, for each year. Husband's allocation for Year 4 is to be made on a Supplemental Form 709 to be filed by Husband.

Lastly, Trustee should file a Form 706-GS(T) Generation-Skipping Transfer Tax Return for Terminations, reporting the taxable termination in Year 10. The inclusion ratio of Trust at the time of the taxable termination will be determined in accordance with the relief granted in this letter. The Forms 709, the Supplemental Form 709, and Form 706-GS(T) are to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each return. Additional copies are enclosed for this purpose.

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.

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.

Sincerely,

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

Enclosure (2)

Copy of Letter for section 6110 purposes  
Copies of Letter to file with supplemental gift tax returns

cc: