

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04

PLR-126671-05

Date: FEBRUARY 03, 2006

LEGEND:

Husband	=
Wife	=
Trust	=
Accountant	=
Date 1	=
Date 2	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=

Dear

This is in response to your letter dated May 12, 2005 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 Taxpayers' generation-skipping transfer (GST) exemption to transfers to a trust.

The facts and representations submitted are summarized as follows:

On Date 1, in Year 1, Husband established Trust, an irrevocable trust, to benefit Husband's children and grandchildren. In Year 1, Husband transferred \$a to Trust. During Year 2, Husband and Wife transferred \$b to Trust. During Year 3, Husband and Wife transferred \$c to Trust. In Year 4, Husband transferred \$d to Trust. During Year 5, Husband and Wife transferred \$e to Trust. In Year 6, Wife transferred \$f to Trust.

Husband and Wife hired Accountant to prepare the Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Years 1 - 3. Husband and Wife consented to treat the gifts made in Years 1 - 3 as being made one-half by each pursuant to section 2513. The gift tax returns failed to report that a transfer was made to Trust in Year 1 and incorrectly reported the amounts of the transfers made to Trust in Years 2 and 3. Furthermore, relying on Accountant's advice, Husband and Wife each allocated \$g of available GST exemption to the Year 2 transfer and \$h of available GST exemption to the Year 3 transfer, mistakenly believing that the allocation would result in the Trust having a zero inclusion ratio for GST purposes. However, the amounts allocated were insufficient. The executor of Husband's estate and Wife will file supplemental Forms 709 to accurately report the amounts transferred to Trust in Years 1-3.

Husband and Wife did not file gift tax returns for Years 4 - 6. It is represented that Husband and Wife, after exercising reasonable diligence, and taking into account their experience and the complexity of the issue, were unaware of the necessity for filing gift tax returns to allocate their GST exemption to the transfers to Trust in those years. It is represented that Husband and Wife intended to allocate GST exemption to the transfers to Trust in Years 4-6.

Husband died on Date 2. The executor of Husband's estate and Wife represent that no gifts were made to Trust other than during Years 1 - 6.

You have requested an extension of time under section 2642(g) and section 301.9100-3 to allocate Taxpayers' available GST exemption to the transfers made to the Trust in Years 1-6 based on the value of the transferred assets as of the date of the original transfers.

Section 2513(a)(1) provides 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, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that the gift is treated as made one-half by each spouse only if both spouses have signified (under the regulations provided for in

subsection (b)), their consent to the application of section 2513(a)(1) in the case of all gifts made during the calendar year by either while married to each other.

Section 2513(b)(2)(A) provides that the consent under section 2513(a)(2) may be signified at any time after the close of the calendar year in which the gift was made. However, the consent may not be signified after the 15th of April following the close of such year, unless before the 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filled by either spouse.

Section 2601 imposes a tax on every generation-skipping transfer, which under section 2611 includes a taxable distribution, taxable termination, and a direct skip, made after October 26, 1986.

Section 2652(a)(2) and section 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations 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 2631(a), as in effect for the years at issue, for purposes of determining the GST tax, 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 2631(b) provides that any allocation under section 2631(a), once made, is irrevocable.

Section 2632(a) provides that any allocation by an individual of his 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 the 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) 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.

Section 26.2632-1(d)(1) provides that a timely allocation of GST exemption by an executor with respect to a lifetime transfer of property that is not included in the transferor's gross estate is made on a Form 709.

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 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, 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).

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. See Notice 2001-50, 2001-2 C.B. 189.

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 sets forth the standards that the Commissioner uses 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. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving 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)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

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 the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Pursuant to section 2513, the executor of Husband's estate and Wife may consent to split the gifts in Years 4-6. If

so, Husband and Wife will be treated as the transferors for GST purposes 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. The executor of Husband's estate and Wife are granted an extension of time of 60 days from the date of this letter to allocate their available GST exemption to their respective transfers to Trust in Years 1-6.

The allocations of GST exemption for Years 1-3 should be made on supplemental Forms 709 and for Years 4-6 on Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the forms. 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 representative.

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,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter