

# Internal Revenue Service

Washington, DC 20224

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May 23, 2006

### Legend

Decedent =

Trust 1 =

Trust 2 =

Trust 3 =

Spouse =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Year 11 =

Year 12 =

Year 13        =  
 Year 14        =  
 Year 15        =  
 Year 16        =  
 Year 17        =  
 Date 2         =  
 Trust 4         =

Grandchild 4   =  
 Date 3         =  
 Trust 5         =

Grandchild 5   =  
 Accountant     =  
 Date 4         =  
 Date 5         =  
 Trust 6         =

Date 6         =

Dear           :

This is in response to your authorized representative's letter dated October 31, 2005, 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, Decedent established Trust 1, Trust 2, and Trust 3. Trust 1, Trust 2, and Trust 3 are trusts with GST potential and were established for the benefit of Spouse and each of Decedent's respective grandchildren, Grandchild 1, Grandchild 2, and Grandchild 3. Pursuant to each trust agreement, Spouse has an ascertainable interest in each trust.

Decedent made transfers of stock to each of Trust 1, Trust 2, and Trust 3 in Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, Year 7, Year 8, Year 9, Year 10, Year 11, Year 12, Year 13, Year 14, Year 15, Year 16, and Year 17.

On Date 2, in Year 7, Decedent established Trust 4, a trust with GST potential for the benefit of Spouse and Grandchild 4. The dispositive provisions of Trust 4 are identical to those contained in Trust 1, Trust 2, and Trust 3, except for the identity of the beneficiaries. Decedent made transfers of stock to Trust 4 in Year 7 through Year 17, inclusive.

On Date 3, in Year 10, Decedent established Trust 5, a trust with GST potential for the benefit of Spouse and Grandchild 5. The dispositive provisions of Trust 5 are identical to those contained in Trust 1, Trust 2, Trust 3, and Trust 4, except for the identity of the beneficiaries. Decedent made transfers of stock to Trust 5 in Year 10 through Year 17, inclusive.

Decedent and Spouse relied upon Accountant, a certified public accountant, to prepare their respective Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns ("gift tax returns") reporting the transfers to the trusts and allocating their respective GST exemption to those transfers. Accountant mistakenly believed that Decedent and Spouse were not required to file gift tax returns. Thus, no gift tax returns were prepared or filed for Decedent or Spouse for Year 1 through Year 17, inclusive and no allocation of Decedent's or Spouse's respective GST exemptions was made.

Decedent died on Date 4. Article 5 of Decedent's will provides, generally, that Decedent bequeaths the residue of her estate to the trustee of Decedent's revocable trust created on Date 5 (Trust 6). Decedent amended Trust 6 in its entirety on Date 6. Article 4 of Trust 6, as amended, provides that if Spouse survives Decedent, the trustee will divide the trust property into separate funds.

Article 4.2 of Trust 6, as amended, provides that the trustee will allocate to "Fund A" an amount equal to the remaining trust property less a sum equal to the largest amount that can pass with the least amount of federal estate tax by reason of the unified credit, after taking account of any adjusted taxable gifts made by Decedent and the state death tax credit allowable to Decedent's estate but no other credit, reduced by payments from or charges to the principal of Decedent's estate or this trust that are not allowed as deductions in computing the amount of federal estate taxes on Decedent's estate and the value of any other property interests that are included in Decedent's gross estate which pass in a manner that will not qualify for the marital or charitable deductions. The remaining trust property will be allocated to "Fund B."

Article 4.5 of Trust 6, as amended, provides, generally, that Decedent intends that "Fund A" will be available for the marital deduction and that only property which may qualify for the marital deduction will be allocated to "Fund A."

Spouse and the executor of Decedent's estate have requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Decedent's and Spouse's respective available GST exemptions with respect to the transfers made to Trust 1, Trust 2, and Trust 3 in Year 3 through Year 17, the transfers made to Trust 4 in Year 7 through Year 17, and the transfers made to Trust 5 in Year 10 through Year 17; (2) that the allocations will be effective as of the dates of the original transfers and made based on the value of the property transferred to the trusts as of the date of the original transfer; and (3) an extension of time under

§ 2642(g) and §§301.9100-1 and 301.9100-3 to allocate Decedent's remaining available GST exemption (after the allocations made pursuant to a grant of relief with respect to ruling request (1), above) to the "Fund B GST Exempt Trust".

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), in effect at the time of the transfer, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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, Spouse and the executor of Decedent's estate are granted an extension of time of 60 days from the date of this letter to make allocations of Decedent's and Spouse's respective available GST exemptions with respect to the transfers made to Trust 1, Trust 2, and Trust 3 in Year 3

through Year 17, inclusive, the transfers made to Trust 4 in Year 7 through Year 17, inclusive, and the transfers made to Trust 5 in Year 10 through Year 17, inclusive. The allocations will be effective as of the dates of the original transfers, and the gift tax value of the transfers to the trusts will be used in determining the amount of GST exemption to be allocated to the trusts. The executor of Decedent's estate is also granted an extension of time of 60 days from the date of this letter to make an allocation of Decedent's remaining available GST exemption (after the allocations discussed above) to the "Fund B GST Exempt Trust."

The allocations of Decedent's and Spouse's GST exemptions to the Year 1 through Year 17 transfers should be made on 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 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 accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

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

Enclosures  
Copy of letter for § 6110 purposes  
Copy of letter