

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-145589-10

Date: APRIL 27, 2011

Re:

LEGEND:

Donor	=
Spouse	=
Trust	=
<u>x</u>	=
Date	=
Year	=

Dear :

This letter responds to your authorized representative's letter of November 1, 2010, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer tax exemption to a transfer to a trust.

The facts and representations submitted are as follows. Donor created an irrevocable trust (Trust) on Date to be held for the benefit of his descendants. On the same day, Donor transferred \$x to Trust.

Donor and Spouse relied on an attorney, a tax analyst, and a certified public accountant for tax advice and to prepare the Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting the transfer. However, the gift was not reported. Donor and Spouse will file gift tax returns for Year and will elect to treat the transfer to Trust as made one-half by each spouse under § 2513. Donor is requesting an extension of time under § 2642(g) to allocate his GST exemption to his portion of the gift.

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

Section 2601 imposes a tax on every generation-skipping transfer (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), as in effect for the year at issue, provides that for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 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 § 2631(a), once made, shall be irrevocable. Section 2631(c), as in effect for the tax years at issue, provided that the \$1,000,000 amount under § 2631(a) is to be adjusted for inflation for calendar years after 1998 and before 2004.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations, as in effect at the time of Donor’s transfer, provided 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 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1), the value of the property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of the transfer.

Section 2642(g)(1)(A) provides, in part, 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.

Section 2642(g)(1)(B) provides that, in determining whether to grant relief, 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, the time for making the allocation 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 §§ 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 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) 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. Accordingly, Donor is granted an extension of time of 120 days from the date of this letter to allocate GST exemption to the transfer of \$x to Trust. The allocation will be effective as of the date of the transfer, and the value of the transfer for gift tax purposes will be used in determining the amount of GST exemption to be allocated with respect to it.

The allocation should be made on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return filed for Year, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709.

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 ruling, 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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

James F. Hogan, Branch Chief
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes