

## Internal Revenue Service

Number: **200626007**

Release Date: 6/30/2006

Index Number: 2632.00-00, 2642.00-00,  
9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-130652-05

Date: MARCH 14, 2006

### Legend

Taxpayer =  
Trust =  
Date 1 =  
Date 2 =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =  
Year 6 =  
Policy =  
Law Firm =

Dear :

This letter is in response to a letter dated February 28, 2006 and prior correspondence from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an allocation of Taxpayer's generation-skipping transfer (GST) tax exemption, and other relief.

The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer, as grantor, established an irrevocable trust, Trust, for the benefit of her children and descendants of her children. In Year 1, Taxpayer transferred cash and other assets to Trust. Taxpayer timely filed United States Gift (and Generation-Skipping Transfer) Tax Return, Form 709, reporting the transfers. However,

with respect to making an allocation of GST exemption with respect to the transfers, Schedule C, Part 2 of Form 709 (GST Exemption Reconciliation), line 4, indicates that a specified amount of GST exemption is being allocated to the transfer. This amount /should have been properly entered on line 5, rather than line 4. Further, a Notice of Allocation of GST exemption containing the information required under § 26.2632-1(b)(2)(i) was not filed with the return.

On Date 2, Taxpayer filed an amended Form 709 for Year 1 that reported a reduced value with respect to certain assets transferred to Trust. On Schedule C, Part 2, line 4 of the amended Form 709 a reduced amount of GST exemption was allocated to the transfer, reflecting the revised valuation of the transferred assets. This amount should have been entered on line 5, rather than line 4. Further, a Notice of Allocation of GST exemption was not filed with the amended return.

In Year 2, Taxpayer transferred cash and other assets to Trust, including Policy, a life insurance policy on Taxpayer's life. Taxpayer timely filed Form 709 for Year 2. However, the return failed to report the transfer of Policy to Trust. Regarding the allocation of GST exemption with respect to the transfers that were reported, Schedule C, Part 2 of Form 709, line 4, indicates that a specified amount of GST exemption (equal to the value of the assets reported on the return) is being allocated to the transfers. This amount should have been properly entered on line 5, rather than line 4. Further, a Notice of Allocation of GST exemption was not filed with the return.

On Date 2, Taxpayer filed an amended Form 709 for Year 2 that reported a reduced value with respect to certain assets transferred to Trust that had previously been reported on the Year 2 Form 709. On Schedule C, Part 2, line 4 of the amended Form 709 a reduced amount of GST exemption was allocated to the transfer, reflecting the revised valuation of the transferred assets. This amount should have been entered on line 5, rather than line 4. Further, a Notice of Allocation of GST exemption was not filed with the amended return. Finally, the amended return did not report the transfer of Policy to Trust.

In Year 3, Taxpayer transferred cash and other assets to Trust. Taxpayer timely filed Form 709, reporting the transfers. However, regarding the allocation of GST exemption with respect to the transfers, Schedule C, Part 2 of Form 709, line 4, indicates that a specified amount of GST exemption is being allocated to the transfer. This amount should have been properly entered on line 5, rather than line 4. Further, a Notice of Allocation of GST exemption was not filed with the return.

In Years 4, 5 and 6, Taxpayer transferred cash to Trust and timely filed Forms 709 reporting the transfers in each year. Regarding allocation of GST exemption with respect to the transfers, on the Forms 709 filed for Years 4, 5 and 6, Schedule C, Part 2 of Form 709, line 5, correctly indicates that a specified amount of GST exemption is

being allocated to the transfer. However, a Notice of Allocation of GST exemption was not filed with the Year 4, 5 and 6 returns.

Taxpayer requests the following rulings:

1. The allocation of Taxpayer's GST Exemption to her gifts to Trust in Years 1-6 substantially complied with the requirements for making an allocation of GST Exemption to Trust.
2. Any allocation by Taxpayer of her GST Exemption to Trust that, as currently reflected on her Forms 709, would otherwise exceed the amount necessary to obtain an inclusion ratio of zero with respect to Trust, be deemed void.
3. The requirements of § 301.9100-3 have been satisfied and Taxpayer is granted a reasonable extension of time to allocate an appropriate amount of her remaining GST Exemption to the transfer of Policy to Trust, effective as of the date of the transfer.
4. The allocations made by Taxpayer are to be effective as of the dates of the transfers to Trust and the gift tax value of the transfers to Trust will be used in determining the inclusion ratio with respect to Trust.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

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)) 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, is irrevocable.

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 that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is made, the amount of GST exemption allocated to it, and if the allocation is late or an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation. The allocation should also state the inclusion ratio of the trust after the allocation. Except as

provided in § 26.2642-3 (relating to charitable lead annuity trusts), 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 generally 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)), and such allocation shall be effective on and after the date of such transfer.

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 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.

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 GST 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 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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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 to advise the taxpayer to make, the election.

In the present case, with regard to the allocations made on the returns filed for Years 1-6, the Taxpayer did not literally comply with the instructions to Form 709 or the requirements in the regulations for making an allocation of GST exemption. However, literal compliance with the procedural instructions to make an election is not always required. Elections may be treated as effective where the taxpayer complied with the essential requirements of a regulation (or of the instructions to the applicable form) even though the taxpayer failed to comply with certain procedural directions therein. See Hewlett-Packard Company v. Commissioner, 67 T.C. 736, 748 (1977), acq. in result, 1979-1 C.B. 1.

We conclude that there is sufficient information provided on the Forms 709 filed by Taxpayer for Years 1-6 to constitute substantial compliance with the requirements for making a timely allocation with respect to each return. Accordingly, we conclude that Taxpayer made timely allocations on the gift tax returns filed for years Year 1-6, in the amounts specified on those returns. These allocations are therefore effective as of the date of the respective transfers to Trust, and the inclusion ratio of Trust will be determined based on the value of the transfers as determined for federal gift tax purposes and the amount of exemption allocated to Trust.

Further, we conclude that with respect to the amounts allocated on the Year 1 and Year 2 gift tax returns as originally filed, to the extent the amount of GST exemption allocated by Taxpayer on those returns exceeds the amount necessary to obtain an inclusion ratio of zero with respect to Trust, such excess allocation is void. See § 26.2632-1(b)(2)(i).

Regarding the Year 2 transfer of Policy to Trust, based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the

date of this letter to make an allocation of her available GST exemption to Trust with respect to the Year 2 transfer of Policy to Trust.

A supplemental Form 709 should be filed for Year 2 reporting the transfer of Policy and allocating the appropriate amount of additional GST exemption. The supplemental Form 709 should include a Notice of Allocation properly allocating the additional amount of exemption to Trust. The allocation will be effective as of the date of the transfer of Policy to Trust, and the inclusion ratio of Trust will be determined based on the value of Policy as determined for federal gift tax purposes and the amount of exemption allocated to Trust. A copy of this letter should be attached to the supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. Copies are included for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to the taxpayer's representative.

The rulings are 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 section 6110 purposes  
Copy of this letter

cc: