

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **201026021**

Release Date: 7/2/2010

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-146091-09

Date:

March 17, 2010

Legend

Husband =

Wife =

Attorney =

Accountant =

Trust =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

g =

Dear :

This responds to your letter dated September 17, 2009, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the

Procedure and Administration Regulations to make an allocation of Husband's generation-skipping transfer (GST) exemption to transfers to Trust.

The facts and representations submitted are summarized as follows:

On Date 1, in Year 1, Husband established Trust for the benefit of Husband's descendants. Husband initially funded Trust with \$a. During Year 2, Husband and his wife, Wife, each transferred \$b to Trust. During Year 3, Husband and Wife each transferred \$c to Trust. During Year 4, Husband and Wife each transferred \$d to Trust. During Year 5, Husband and Wife each transferred \$e to Trust. During Year 6, Husband and Wife each transferred \$f to Trust. During Year 7, Husband and Wife each transferred \$g to Trust.

Husband's attorney, Attorney, advised Husband to direct Husband's accountant to allocate GST exemption to the transfers to Trust. Husband informed his accountant, Accountant, about the gifts that were made to Trust in Years 1-7 and that Husband intended those gifts to result in Trust being exempt from GST tax. Husband and Wife consented to treat the gifts made in Years 1 - 3 as being made one-half by each pursuant to section 2513. Accountant filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Years 2 and 3, but failed to allocate GST exemption on those returns. Moreover, Accountant failed to file Forms 709, for Years 1, and 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 - 7. It is represented that GST exemption was automatically allocated for the Year 7 transfer under the deemed allocation rules under § 2632(c).

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Husband's and Wife's 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.

LAW AND ANALYSIS

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 filed by either spouse.

Section 2601 of the Internal Revenue Service 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 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 years at issue, for purposes of determining the GST tax, provides that 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) 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.

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.

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

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). 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, Husband is granted an extension of time of 60 days from the date of this letter to make an allocation of his available GST exemption, with respect to the transfers to Trust in Years 1-6. The allocation will be effective as of the respective date of the transfer to Trust and the value of the transfer to Trust as determined for federal gift tax purposes will be used in determining the amount of Husband's exemption to be allocated to Trust.

These allocations should be made on supplemental Forms 709 for Years 1-6. The Forms 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709. 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 representatives.

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,

Associate Chief Counsel
Passthroughs and Special Industries

By:

Leslie H. Finlow
Acting Senior Technician Reviewer
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: