

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-165132-04

Date: JUNE 02, 2005

Legend

Husband =

Wife =

Law Firm =

Partner 1 =

Partner 2 =

Company =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

\$X =

Dear :

This is in response to your authorized representative's letter dated December 10, 2004, submitted on your behalf, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a timely allocation of Generation-Skipping Transfer (GST) exemption under section 2642(g) of the Internal Revenue Code.

According to the facts submitted, on Date 1, Partner 1 of Law Firm met with Husband concerning estate planning matters and proposed the idea of creating trusts for the lifetime benefit of Husband and Wife's children and their descendants. Partner 1 informed Husband and Wife about the availability of the GST exemption.

On Date 2, Husband established four separate trusts (Trusts) for the primary benefit of each of Husband and Wife's four children. Husband transferred \$X to each trust. Husband and Wife elected pursuant to section 2513, to treat the gifts for federal estate tax purposes as made one-half by each.

Under the terms of each trust agreement, each child of Husband and Wife is to receive the income from his or her separate trust during the child's lifetime. Trustee is authorized to invade principal of a child's trust for the child's health and reasonable support. Upon the death of a child, the child's trust terminates, and the principal and undistributed and accrued income is to then be paid over to Husband's descendants (other than such child, such child's estate, the creditors of such child or the creditors of such child's estate), outright or in further trust as the child appoints, or in default of appointment to the child's descendants, per stirpes, or if none, to Grantor's descendants, per stirpes.

The Tax Group of Company prepared Husband and Wife's federal gift tax returns reporting the Year 1 transfers to the trusts. The Tax Group did not allocate Husband and Wife's GST exemption to the Trusts on the Year 1 return.

During a Year 2 meeting between Husband and Partner 2 of Law Firm to review Husband and Wife's estate planning, Partner 2 discovered that Husband's GST exemption had not been allocated on Husband's Year 1 gift tax return to the transfers to Trusts.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer (GST) 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 GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

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 in a direct skip, is made on Form 709.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the individual's spouse, then such gift shall be so treated for GST tax purposes.

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 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 section 2001(f)(2)).

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). 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.

Under § 301.9100-1(c), 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. See Notice 2001-50, 2001-34 I.R.B. 189. In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 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 the grant of 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, Husband and Wife are granted an extension of time of 60 days from the date of this letter to allocate their available GST exemptions with respect to the Year 1 transfers to the four Trusts. The allocations will be effective as of Date 2 and the gift tax value of the transfers to the Trusts will be used in determining the inclusion ratio with respect to each trust.

The allocations of GST exemption for each of Husband and Wife should be made on supplemental Forms 709 reporting the Date 2 transfers. In addition, these returns must signify the appropriate consent to "split-gift" treatment under § 2513. The supplemental Forms 709 are to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental 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 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.

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 Maloy
Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosures

Copy for section 6110 purposes
Copies of this letter

cc: