

## Internal Revenue Service

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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:B09

PLR-107702-06

Date:

October 05, 2006

### Legend:

Date 1 =

Taxpayer =

Trust =

Property =

State =

A =

Trust A =

Trust B =

Attorney =

Year 1 =

B =

Dear :

This is in response to your authorized representative's letter dated January 25, 2006, 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 an allocation of Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer established the Trust, an irrevocable trust with GST potential, for the primary benefit of her children.

Article 1 of the Trust provides that if the value of the trust estate on Date 1 is not more than one million dollars, the trustees shall allocate the entire trust estate to the "GST-exempt Family Trust." If the value of the trust estate on Date 1 is more than one million dollars, the trustees shall allocate to the GST-exempt Family Trust a share of the

trust estate having a value on Date 1 of one million dollars and the trustees shall allocate the rest of the trust estate to the “Family Trust.”

Article 2.1 provides, in part, that the trustees shall divide the GST-exempt Family Trust and the Family Trust into separate trusts of equal value, creating one trust for each of Taxpayer’s two children. Each trust created from the GST-exempt Family Trust shall be referred to as a “Child’s Lifetime Trust” and each trust created from the Family Trust shall be referred to as a “Child’s Withdrawal Trust.”

Also on Date 1, Taxpayer transferred Property located in State with a reported value of \$A to the Trust. Pursuant to the terms of the Trust, Trust A and Trust B, two separate Child’s Lifetime Trusts were created.

Taxpayer relied upon her attorney, Attorney, to prepare her Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return (“gift tax return”) for Year 1. On the gift tax return, Taxpayer reported the transfer to Trust and claimed annual exclusions totaling \$B. Due to an oversight, however, no allocation of Taxpayer’s GST exemption was made to the transfer to Trust.

Taxpayer has requested the following rulings: (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate her available GST exemption with respect to the Year 1 transfer to the Trust; (2) that the allocation will be effective as of Date 1, the date of the original transfer, and made based on the value of the property transferred to the Trust as of the date of the original transfer; and (3) if relief is granted and the allocation is made, Trust A and Trust B will each have inclusion ratios of zero.

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, 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 with respect to the Year 1 transfer to the Trust. In order for the value of the Year 1 transfer to Trust to have a zero inclusion ratio for GST purposes, Taxpayer will need to allocate GST exemption to the entire value of the transfer, including amounts for which an annual exclusion was claimed for gift tax purposes. The allocation will be effective as of Date 1, the date of the original transfer, and the value of the property transferred to the Trust as of Date 1 will be used in determining the amount of GST exemption to be allocated to the Trust. Provided that the amount of GST exemption allocated to the Trust is equal to the value of the assets transferred to the Trust on Date 1, Trust A and Trust B will each have inclusion ratios of zero.

The allocation of Taxpayer's GST exemption to the Year 1 transfer should be made on a supplemental Form 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 Form 709. A copy is 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. Specifically, no opinion is expressed or implied regarding the value of the property transferred to the Trust. In addition, no opinion is expressed or implied regarding whether the amount qualifying for annual exclusions is \$B or a lesser amount. If the amount qualifying for annual exclusions is less than \$B, the difference will be added to the aggregate sum of the taxable gifts for preceding calendar periods under § 2504 in determining the gift tax for future transfers and the adjusted taxable gifts for under § 2001(f) for estate tax purposes. See §§25.2504-2(a) and 20.2001-1(a).

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,

William P. O'Shea

William P. O'Shea  
Acting Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures:

Copy of letter for § 6110 purposes  
Copy of letter