

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:

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PLR-143148-05

Date: FEBRUARY 08, 2006

Legend

Taxpayer =

Spouse =

Trust =

Partnership =

Date 1 =

Date 2 =

Year =

Dear :

This letter is in response to a letter dated August 4, 2005 from your authorized representative requesting a ruling regarding the application of § 2632 of the Internal Revenue Code to Trust.

The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer, as Settlor, established an irrevocable trust, Trust, for the benefit of his descendants. On Date 2, Settler transferred a limited partnership interest in Partnership to Trust. The trustee of Trust is an independent trustee.

Article I(A) of Trust provides that the trustees may, in their discretion, distribute to Settlor's descendant's, per stirpes, so much of the net income and principal of Trust as the trustees deem necessary for the health, education, maintenance, and support of Settlor's descendants. In addition, the trustees may distribute to Settlor's descendants,

per stirpes, so much of the net income and principal for any other purpose the trustees deem worthwhile and in the best interest of the Settlor's descendants.

Article I(C) provides that Trust is to terminate on the first to occur of (1) the death of Settlor, and (2) such time as the trustees, in their discretion, first deem it advisable to make a distribution of Trust income or principal to Settlor's descendants in shares other than per stirpes. Upon termination, the trustees are to divide and set apart the then principal of Trust, per stirpes, for Settlor's descendants then living, and the shares set apart are to be administered in accordance with Article II. Article II(A) provides that any share set apart for a descendant of Settlor (the Beneficiary) is to be held by the trustees as the principal of a separate trust for the primary benefit of the Beneficiary. The trustees may, in their discretion, distribute to any one or more of the Beneficiary and his or her descendants living so much of the net income and principal of the trust as the trustees deem necessary for the health, education, maintenance and support of Beneficiary and his or her descendants. In addition, the trustees may distribute to the Beneficiary and his or her descendants so much of the net income and principal for any other purpose the trustees deem worthwhile and in the best interest of Beneficiary and his or her descendants.

Article II(C) provides that upon the death of the Beneficiary, the trust is to terminate and the trustees are to distribute the then principal as follows: 1) If a taxable termination or taxable distribution would occur by reason of the Beneficiary's death and the trust has an inclusion ratio of greater than zero, the trustees are to distribute the balance of the Beneficiary's share to any one or more persons, including the Beneficiary's estate or the creditors of the Beneficiary's estate, as the Beneficiary appoints by will making specific reference to this general power of appointment. 2) If a taxable termination or taxable distribution would not occur by reason of the Beneficiary's death or if a taxable termination or taxable distribution would occur, but the Beneficiary fails to exercise his or her general power of appointment, the balance of the Beneficiary's share is to be distributed to Settlor's descendants (excluding the Beneficiary, the Beneficiary's estate, the creditors of Beneficiary, and the creditors of the Beneficiary's estate) as the Beneficiary appoints by will making specific reference to this limited power of appointment. 3) If the Beneficiary does not exercise his or her limited or general powers of appointment, the balance of the Beneficiary's share is to be distributed to the Beneficiary's then living descendants, per stirpes, or, if none for the then living descendant of the Beneficiary's most immediate ancestor who is the Settlor or a descendant of the Settlor and who has any descendant then living.

In this case, Taxpayer transferred a nineteen percent (19%) limited partnership interest in Partnership to Trust. Taxpayer and Spouse timely filed United States Gift (and Generation-Skipping Transfer) Tax Returns, Forms 709, to report the transfer for Year and consented to split the gifts pursuant to § 2513. Taxpayer and Spouse attached Notices of Allocation identifying the gift to which the allocation was applicable, the value of the gift and the amount of GST tax exemption Taxpayer and Spouse

wanted to allocate. However, neither Taxpayer nor Spouse included the amount of such allocation of GST tax exemption on line 5 of Schedule C of his or her Form 709.

Taxpayer and Spouse request the following ruling:

Taxpayer and Spouse have substantially complied with the requirements of making a timely allocation of GST tax exemption to Trust with respect to their Form 709s filed for Year.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under section 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 if 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. Generally, an allocation of GST exemption may be made by a formula; e.g., the allocation may be expressed in terms of the amount necessary to produce and inclusion ratio of zero. 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(g)(2) provides that an allocation of GST exemption under § 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be

taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

We believe that there is sufficient information provided on Taxpayer's and Spouse's Year gift tax returns to conclude that Taxpayer and Spouse intended to allocate part of their exemption to Trust. A Notice of Allocation and the Trust agreement were attached to each gift tax return. Article II(C) of Trust provides language indicating that a material purpose of Trust is to utilize the available exemption from the generation-skipping transfer tax. Accordingly, we conclude that the federal gift tax returns contain sufficient information to constitute substantial compliance with the requirements for making a timely allocation of Taxpayer's and Spouse's GST exemption to Trust for Year.

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 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 this ruling, 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 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,

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures
Copy for section 6110 purposes
Copy of this letter

cc: