

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:B04

PLR-150721-04

Date: OCTOBER 07, 2005

Re:

Legend

Husband =

Wife =

Daughter =

Daughter's Trust =

Son =

Trusts =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

Year 3 =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

\$g =

Accountant =

Executor of Husband's Estate =

Dear :

This is in response to a letter from your authorized representative dated May 13, 2005, and prior correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration

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Regulations to make allocations of Husband's generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are summarized as follows: Husband and Wife resided in a community property state. On Date 1, they executed a trust agreement creating two irrevocable trusts, equal in value, for the benefit of their Daughter and her descendants (Daughter's Trust) and their Son and his descendants (Son's Trust). The trust agreement provides that the trusts for Daughter and Son shall last for her or his lifetime and shall terminate at her or his death. Son has a special testamentary power of appointment over the assets of his trust. Upon Daughter's death, the assets of her trust are to be divided into shares for the benefit of her descendants, per stirpes.

Husband and Wife made gifts to each trust in Year 1 and Year 2, and each spouse timely filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for each year. Each spouse reported a total gift of \$a (\$b to each trust) in Year 1, and a total gift of \$c (\$d to each trust) in Year 2. The Forms 709 were prepared by the spouses' Accountant. Neither spouse's GST exemption was allocated to either of the transfers to the trusts.

Wife died on Date 2 in Year 3. The executor of Wife's estate allocated Wife's available GST exemption of \$e to Wife's Year 1 and Year 2 transfers to the two trusts on Wife's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

In Year 3, Husband made an additional gift to the trusts and timely filed a Form 709, prepared by Accountant, reporting the total value of the gift as \$f (\$g to each trust). No allocation of Husband's GST exemption was made on the Form 709.

Husband died on Date 3 when the GST exemption amount was \$1,120,000. The executor of Husband's estate allocated \$120,000 of Husband's GST exemption to Husband's portion of Daughter's Trust on Husband's Form 706, and attached a statement allocating Husband's additional \$1,000,000 GST exemption to Daughter's Trust if the extension of time to allocate is not granted as discussed below. Husband's Form 706 was filed on Date 4. Daughter died on Date 5. You have requested an extension of time under § 2642(g) and § 301.9100-3 to make allocations of Husband's \$1,000,000 GST exemption to Husband's Year 1, Year 2, and Year 3 transfers to the trusts.

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.

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Under § 2652(a), an individual shall be treated as transferring any property with respect to which such individual is the transferor. The term “transferor” means, in general, either the decedent, in the case of any property subject to the estate tax, or the donor, in the case of property subject to the gift tax.

Section 2654(b) provides that for purposes of the GST tax, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts.

Section 26.2654-1(a)(1) of the Generation-Skipping Transfer Tax Regulations provides that if a single trust consists solely of substantially separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for GST purposes. However, a portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. Additions to and distributions from such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise.

Section 26.2654-1(a)(2) provides that if there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for GST purposes. Additions to and distributions from such trusts are allocated pro rata among the separate trusts unless otherwise expressly provided in the governing instrument. If an individual makes an addition to a trust of which the individual is not the sole transferor, the portion of the single trust attributable to each separate trust is determined by multiplying the fair market value of the single trust immediately after the contribution by a fraction. The numerator of the fraction is the value of the separate trust immediately after the contribution. The denominator of the fraction is the fair market value of the all the property in the single trust immediately after the transfer.

Section 2602 provides that the amount of the GST 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess of 1 over the “applicable fraction.” The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or the property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect at the time of the transfers to the trusts in this case, 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

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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 26.2654-1(a)((4) of the regulations provides that with respect to a separate share treated as a separate trust under §§ 26.2654-1(a)(1) and (2), an individual's GST exemption is allocated to the separate trust.

Section 2632(a) 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) provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return (Form 709), the value of the property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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, the time for making the allocation 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 is 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) 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).

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. Accordingly, the Executor of Husband's estate is granted an extension of time of 60 days from the date of this letter to allocate \$1,000,000 of Husband's available GST tax exemption to Husband's Year 1, Year 2, and Year 3 transfers to Daughter's Trust and Son's Trust. The allocations can be made only to the separate portion of each trust for which Husband is the transferor and must be equally allocated among the trusts. The allocations will be effective as of the dates of the transfers and should be made based on the value of the property transferred to the trusts on the dates of the transfers.

The allocations of Husband's GST exemption should be made on Supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Supplemental Forms 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.

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 C. Maloy
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy of letter

Copy for section 6110 purposes

cc: