

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

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CC:PSI:B09

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Date:

February 23, 2006

### Legend

Date 1 =

Taxpayer =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Child 1 =

Child 2 =

Date 2 =

Year 1 =

A =

B =

C =

Spouse =

Return =

Preparer

D =

E =

F =

Dear :

This is in response to your letter dated October 24, 2005, requesting a ruling regarding the application of § 2642 of the Internal Revenue Code to certain trusts.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer established Trust 1, Trust 2, Trust 3, and Trust 4, irrevocable trusts with generation-skipping transfer (GST) tax potential. Trust 1 and Trust 2 are for the primary benefit of Child 1 and Child 1's descendants. Trust 3 and Trust 4 are for the primary benefit of Child 2 and Child 2's descendants.

On Date 2, in Year 1, Taxpayer transferred \$A to each of Trust 1, Trust 2, and Trust 3 and \$B to Trust 4. The total amount Taxpayer transferred to Trust 1, Trust 2, Trust 3, and Trust 4 in Year 1 was \$C. Spouse made no gifts during Year 1, however, she consented under § 2513 to have the gifts made by her spouse considered as made one-half by her.

Taxpayer and Spouse each relied upon Return Preparer to prepare their respective Year 1 Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax returns"). The transfers to the trusts were reported on the Year 1 gift tax returns, however, Return Preparer mistakenly believed that the transfers were direct skips and subject to both the gift and GST tax. Return Preparer reported the Year 1 transfers to Trust 1, Trust 2, Trust 3, and Trust 4 on Schedule A, part 2 and included a computation of GST tax on Schedule C. On Schedule C, part 2, line 4, Return Preparer indicated that Taxpayer was claiming \$D (one-half of \$C) of his GST exemption on this return. In addition, on Schedule C, part 3, Return Preparer indicated that as a result of Taxpayer's allocation of GST exemption, Trust 1, Trust 2, Trust 3, and Trust 4 would each have inclusion ratios of zero. Return Preparer did not attach a notice of allocation to the gift tax return since he mistakenly believed that the transfers were direct skips.

Taxpayer has requested a ruling that he substantially complied with the requirements for making a timely allocation of GST exemption to the value of the property transferred to Trust 1, Trust 2, Trust 3, and Trust 4 with respect to the gift tax return filed for Year 1.

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)(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.

Section 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

In this case, the information contained on Schedule C of Taxpayer's Year 1 gift tax return demonstrates Taxpayer's intent to allocate \$D of his GST exemption in order to obtain an inclusion ratio of zero for each of Trust 1, Trust 2, Trust 3, and Trust 4. Based on the facts submitted and the representations made, we conclude that Taxpayer's Year 1 gift tax return contains sufficient information to constitute substantial compliance under § 2642(g)(2). Accordingly, Taxpayer shall be deemed to have made a timely allocation of \$E (one-half of \$A) of his GST exemption with respect to the

transfers made to each of Trust 1, Trust 2, and Trust 3 in Year 1 and \$F (one-half of \$B) of his GST exemption with respect to the transfer made to Trust 4 in Year 1.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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,

Melissa C. Liquerman  
Branch Chief, Branch 9  
(Passthroughs & Special Industries)

Enclosure:  
Copy for § 6110 purposes