

**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:04

PLR-111917-05

Date: NOVEMBER 10, 2005

Legend

Grantors	-
Trust	-
Date	-
Year 1	-
Year 2	-
Year 3	-
Year 4	-
Year 6	-
Year 10	-
Year 11	-
Year 12	-
<u>S</u>	-
<u>I</u>	-
<u>U</u>	-
<u>V</u>	-

Dear :

This letter is in response to a letter dated February 28, 2005 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an allocation of Taxpayer's and Spouse's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date, Grantors established an irrevocable trust, Trust, for the benefit of their children and descendants of their children. In Year 1, Grantors transferred cash in the amount of \$S to Trust. Grantors hired attorneys and certified public accountants for advice regarding the creation and funding of trust. The certified public accountants advised Grantors that gift tax returns were not required to be filed and, thus, no returns were filed and Grantors available GST exemptions were not allocated to the transfers in Year 1.

In Year 2, Grantors transferred cash in the amount of \$T to Trust. Grantors consented to split the gifts in Year 2 and timely filed United States Gift (and Generation-Skipping Transfer) Tax Returns, Forms 709, (gift tax returns) to report those transfers to Trust and to split the gifts pursuant to § 2513 for Year 2. However, the certified public accountant, who prepared the returns and on whose expertise Grantors relied, inadvertently failed to allocate Grantor's available GST tax exemptions to the transfers.

In Year 3, Year 4, and Year 6 through Year 10, Grantors again transferred cash in the amount of \$S to Trust. Again, pursuant to the advice of the certified public accountant, did not file gift tax returns for any of those years and thus, Grantors available GST exemptions were not allocated to the transfers in Years 3, 4 and 6 through 10.

In Year 11, Grantors transferred cash in the amount of \$U to Trust. Again, pursuant to the advice of the certified public accountants, no returns were filed and Grantors available GST exemptions were not allocated to the transfers in Year 11.

In Year 12, Grantors transferred cash in the amount of \$V to Trust. While preparing the gift tax return for Year 12, the certified public accountants sought advice from the attorneys concerning the preparation of the gift tax return. The attorneys determined that Trust was a GST trust and advised Grantors that to they should have allocated their GST tax exemptions for the prior gifts to Trust on their Year 2 gift tax returns for Trust to be exempt from GST tax. In addition, attorneys advised Grantors that they should have filed gift tax returns for Year 1 and Years 3, 4 and 6 through 11 in order to allocate their available GST exemptions to the transfers made in Year 1 and Years 3, 4 and 6 through 11. The attorney also advised Grantors that they had to allocate any available GST exemption to the transfers to Trust in Year 12 and file a gift tax return reporting the transfer and allocating their GST exemptions.

Section 2501(a) of the Internal Revenue Code imposes a tax on the transfer of property by gift during each calendar year by any individual.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the donor's spouse is considered for purposes of the gift tax as made one-half by the donor and one-half by the donor's spouse, but only if at the time of the gift, each spouse is a citizen or resident of the United States. Section 2513(a)(2) provides that in order to qualify for this "split gift" treatment, both spouses must signify their consent to the application of § 2513(a)(1) in the case of all gifts made during the calendar year by either while married to each other.

Section 2513(b)(2)(A) provides that the consent under § 2513(a)(2) may be signified at any time after the close of the calendar year in which the gift was made. The consent may not be signified after the 15<sup>th</sup> of April following the close of such year, unless before the 15<sup>th</sup> day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse. Thus, if a late return is filed, the consent must be made on the first return filed for such 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 GST tax, 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 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 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 § 2001(f)(2)).

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 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.

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.

Notice 2001-50, 2001-2 C.B. 189, provides that under section 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 GST 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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 to 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, Grantors are each granted an extension of time of 60 days from the date of this letter to make allocations of their available GST exemption to the transfers to Trust for Year 1 through Year 4 and Year 6 through Year 12 for which each Grantor is treated as a transferor for purposes of § 2652(a)(2). An individual or supplemental Form 709 should be filed for each taxpayer for Year 1 through Year 4 and Year 6 through Year 12. Each Form 709 should include a Notice of Allocation properly allocating the taxpayer's GST exemption to the transfers to Trust. The allocations will be effective as of the respective dates of the transfers to Trust, and the inclusion ratio of Trust will be determined based on the value of the transfers to Trust as determined for federal gift tax purposes and the amount of exemption allocated to Trust. A copy of this letter should be attached to each individual or supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. Copies are included for this purpose.

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 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.

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 for section 6110 purposes  
Copy of this letter

cc: