

Internal Revenue Service

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Department of the Treasury

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Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:04

PLR-162582-05

Date: DECEMBER 13, 2006

Legend

H =

W =

Son 1 =

Son 2 =

Daughter =

Stepson =

Family Trust =

Trust 1 =

Trust 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 3 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Year 11 =

Year 12 =

Year 13 =

Attorneys =

Accountant 1 =

Accountant 2 =

Dear :

This is in response to your letter dated March 10, 2006, and prior correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate H's and W's GST exemption to certain transfers to trusts.

The facts and representations submitted are summarized as follows:

During their lives, H and W established different trusts to benefit their children and their issue. H and W were survived by four children, Son 1, Son 2, Daughter, and Stepson. The trusts established by H and W exclude Son 1 and his issue as beneficiaries because H and W made other lifetime gifts to Son 1.

On Date 2, in Year 1, H and W created Trust 1, an irrevocable trust, for the benefit of Daughter, her three children, and their issue, and Son 2's child, and his issue. In Year 1, and Years 3 through Year 9, H made cash gifts to Trust 1 and, in Year 1 and Years 3 through Year 10, W made cash gifts to Trust 1.

In Year 3, H and W's accountant, Accountant 1, prepared and filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to make a late allocation of H and W's GST exemptions to H's and W's Year 1 gifts to Trust 1. Accountant 1 prepared and filed timely Forms 709 to allocate H's GST exemption to the Years 3 through 7 gifts to Trust 1 and to allocate W's GST exemption to the Years 3 through 7 gifts to Trust 1. However, on the Forms 709 filed to H's Years 8 and 9 gifts to Trust 1, Accountant 1 failed to allocate H's GST exemption to the gifts to Trust 1. On the Form 709 filed for W's Year 8 gift to Trust 1, Accountant 1 failed to allocate W's GST exemption to the gift to Trust 1. On the Forms 709 filed for W's Years 9 and 10 gifts to Trust 1, Accountant 1 made only a partial allocation of W's GST exemption to the gifts to Trust 1.

On Date 1, H and W created Family Trust, a revocable living trust, as amended. H died on Date 3. Upon H's death, Family Trust was divided into Survivor's trust, Bypass Trust, and QTIP Trust. QTIP Trust was created to benefit the surviving spouse, W, and Son 2, Daughter, Stepson, and their issue. QTIP Trust was further divided into QTIP Exempt Trust and QTIP Non-Exempt Trust.

On Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, H's estate made a reverse QTIP election under § 2652(a)(3) to treat H as the transferor of the property passing to the QTIP Exempt Trust for purposes of § 2601 and, on Schedule R, H's estate allocated H's available GST exemption to QTIP Exempt Trust.

On Date 4, in Year 11, W created Trust 2, an irrevocable trust, for the benefit of Son 2, Daughter, Stepson, and their issue. W made cash gifts to Trust 2 in Years 11, 12, and 13. Accountant 2 prepared and filed Forms 709 to report W's Years 11 through 13 gifts to Trust 2. However, Accountant 2 failed to allocate W's GST exemption to the Year 11 gift to Trust 2 and only made partial allocations of W's GST exemption to the Years 12 and 13 gifts to Trust 2.

W died on Date 5. Family Trust provides that upon the surviving trustor's death, Survivor's Trust, QTIP Non-Exempt Trust, and QTIP Exempt Trust would be consolidated to form the Trust Estate and then distributed to Son 2, Daughter, and Stepson, if living, and if not, to their living issue, either outright or in trust, as provided in the instrument. Stepson disclaimed his interest in the Trust Estate and his share passed to his children in trust. Son 2's interest was divided into an exempt trust and non-exempt trust. On Schedule R of Form 706 filed for W's estate, W's available GST exemption was allocated to the trust for Stepson's issue and Son 2's exempt trust.

It is represented that no distributions have been made from Trust 1, Trust 2, or the trusts created under Family Trust to skip persons.

You have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate: (i) H's GST exemptions to the Years 8 and 9 gifts made to Trust 1; (ii) W's GST exemption to the Years 8, 9, and 10 gifts made to Trust 1; (iii) W's GST exemption to the Years 11, 12, and 13 gifts made to Trust 2; (iv) that such allocations will be effective as of the respective dates for the transfers to such trusts; and (v) that the gift tax values of the transfers to Trust 1 and Trust 2 will be used in determining the amount of the GST exemption to be allocated to such trusts.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

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) of the Generation-Skipping Transfer Tax Regulations provides 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.

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 or is deemed to be made under § 2632(b)(1) or (c)(1), (A) the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for purposes of chapter 12, and (B) 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 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 (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 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 not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the 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) 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, you are granted an extension of time of 60 days under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate: (i) H's GST exemption to the Years 8 and 9 gifts made to Trust 1; (ii) W's GST exemption to Years 8, 9, and 10 gifts made to Trust 1; (iii) W's GST exemption to the Years 11, 12, and 13 gifts made to Trust 2; (iv) that such allocations will be effective as of the respective dates for the transfers to such trusts; and, (v) that the gift tax values of the transfers to Trust 1 and Trust 2 will be used in determining the amount of the GST exemption to be allocated to such trusts. The relief granted is deemed to proceed the subsequent allocation of H's GST exemption to QTIP Exempt Trust. Accordingly, it would be appropriate to reduce the GST exemption allocated to that trust to the amount of H's GST exemption actually available to allocate to that trust after the relief given and make the appropriate changes to funding.

Allocations of H's and W's GST exemptions should be reported made on supplemental Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, Ohio 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 any aspect of any transaction or item discussed or referenced in this letter 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.

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

Sincerely,

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

Enclosures

Copy for § 6110 purposes
Copy of this letter