

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-150148-06
Date: JUNE 29, 2007

Legend

Grantor -
Spouse -
Child A -
Child B -
Child C -
Trust A -
Trust B -
Trust C -
Date 1 -
Date 2 -
Year -
\$S -

Dear :

This letter is in response to the letter dated October 18, 2006, and subsequent information 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 allocations of Grantor's and Spouse's respective generation-skipping transfer (GST) exemptions.

The facts and representations submitted are summarized as follows:

On Date 1, Grantor established three substantially identical irrevocable trusts: Trust A for the primary benefit of Child A and his descendants, Trust B for the primary benefit of Child B and his descendants, and Trust C for the primary benefit of Child C and his descendants. On Date 2 in Year, Grantor transferred \$S to each of the three trusts.

Grantor and Spouse each filed separate United States Gift (and Generation-Skipping Transfer) Tax Returns, Forms 709, on which they elected under § 2513 to treat all transfers in Year, including the Date 2 transfers to Trust A, Trust B, and Trust C as made one-half by each spouse. The certified public accountant who prepared the returns relied on erroneous information that was mistakenly provided by the Grantor's and Spouse's business manager and reported the Date 2 transfers as gifts made directly to each of Child A, Child B, and Child C, rather than to Trusts A, B, and C. Consequently, the accountant failed to allocate Grantor's and Spouse's available GST tax exemptions to the Date 2 transfers.

It is represented that no additions have been made to Trust A, Trust B, or Trust C since Year, and no distributions have been made to skip persons from any of the trusts.

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 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer 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 to 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) 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 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) 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.

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 for such transfer, 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 such allocation shall be effective on and after the date of such transfer.

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). 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 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 six 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(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) 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, Grantor and Spouse are each granted an extension of time of 60 days from the date of this letter to make allocations of their respective GST exemptions for the Date 2 transfers to Trust A, Trust B, and Trust C. Separate individual supplemental Form 709s should be filed for Grantor and Spouse for Year. Each Form 709 should include a Notice of Allocation properly allocating each Taxpayer's GST exemption to the transfers to Trust A, Trust B, and Trust C. The allocations will be effective as of the respective date of the transfers to the trusts, and the inclusion ratio of each trust will be determined based on the value of the transfers to each trust as determined for federal gift tax purposes and the amount of exemption allocated to each trust. A copy of this letter should be attached to each individual 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 Grantor and Spouse 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 Taxpayers' representative.

This ruling is directed only to the Taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
2 copies of this letter