

Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-114993-07

Date: FEBRUARY 13, 2008

Re:

Legend:

Husband =

Wife =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 2 =

Year 3 =

Trust =

\$A =

\$B =

Dear _____ :

This is in response to a letter dated March 22, 2007, from your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate Taxpayers' available GST exemptions to a trust.

Facts

Taxpayers are Husband and Wife. On Date 1, Husband established Trust, an irrevocable trust, for the benefit of Taxpayers' children, grandchildren, and other descendants and transferred \$A in cash to Trust. On Date 2, Husband transferred \$B in cash to Trust.

For each year in which transfers were made, Year 1 and Year 2, Taxpayers filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, and elected under § 2513 to treat the gifts as made one-half by each spouse. However, Taxpayers' tax advisors who prepared the Forms 709 failed to properly allocate Husband's and Wife's GST exemption to the transfers attributable to each spouse. The amount of the allowable GST exemption for Year 1 and Year 2 was \$1,000,000.

Husband died on Date 3. The Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) for Husband's estate was timely filed on Date 4. No Schedule R or Notice of Allocation was attached to the Form 706 as originally filed. On Date 3, the amount of the allowable GST exemption was \$1,500,000. On Date 5, a Supplemental Form 706 was filed pursuant to § 301.9100-2 by the Personal Representative of Husband's Estate allocating all of Husband's GST exemption to the Trust. On Date 6, a Form 709 for Year 3 was filed by Wife for the purpose of making a late allocation of Wife's GST exemption to the share of the Trust with respect to which she was the transferor. On Date 6, the amount of the allowable GST exemption was \$2,000,000.

At the time of Husband's death, all of his allowable GST exemption was still available. At the time of the discovery of the error, Wife had not allocated any of her allowable GST exemption, nor had she made any transfer to which her GST exemption would have been allocated automatically under § 2632(c). To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST liability on the part of Trust or any of its beneficiaries.

Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST) (within the meaning of subchapter B). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

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 is made on Form 709. In general, an allocation of GST tax exemption is void to the extent the amount allocated exceeds the amount necessary to obtain a zero inclusion ratio 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)).

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) 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 § 2642(g)(1), 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. See Notice 2001-50, 2001-20 C.B. 189.

Section 2652(a) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

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 301.9100-2(b) provides that an automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer takes corrective action as defined in § 301.9100-2(c) within that 6-month extension period.

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 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). 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, the Personal Representative of Husband's Estate is granted an extension of time of 60 days from the date of this letter to allocate Husband's available GST exemption to Trust with respect to the transfers to Trust in Year 1 and Year 2. The allocations will be effective as of the respective dates of the transfers to Trust, and will be based on the value of the assets Husband contributed to Trust in Year 1 and Year 2. The additional allocation of Husband's GST exemption to Trust is effective as of Date 5 and is based on the Date 5 value of Trust. Provided that the amount of Husband's GST exemption allocated to Trust in conjunction with this ruling is equal to the federal gift tax value of the assets contributed to Trust in Year 1 and Year 2, and taking into account the allocation of Husband's GST exemption on Date 5, the share of Trust with respect to which Husband is the transferor will have an inclusion ratio of zero. Any allocation of Husband's GST exemption to the share of Trust with respect to which Husband is the transferor that is in excess of the amount needed to derive an inclusion ratio of zero is void.

Further, Wife is granted an extension of time of 60 days from the date of this letter to allocate Wife's available GST exemption to Trust with respect to the transfers to Trust in Year 1 and Year 2. The allocations will be effective as of the respective dates

of the transfers to Trust, and will be based on the value of the assets Wife contributed to Trust in Year 1 and Year 2. The additional allocation of Wife's GST exemption to Trust is effective as of Date 6 and is based on the Date 6 value of Trust. Provided that the amount of Wife's GST exemption allocated to Trust in conjunction with this ruling is equal to the federal gift tax value of the assets contributed to Trust in Year 1 and Year 2, and taking into account the allocation of Wife's GST exemption on Date 6, the share of Trust with respect to which Wife is the transferor will have an inclusion ratio of zero. Any allocation of Wife's GST exemption to the share of Trust with respect to which Wife is the transferor that is in excess of the amount needed to derive an inclusion ratio of zero is void.

The allocations of Taxpayers' GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 709.

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 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 who requested 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 and Special Industries)

Enclosure

Copy for section 6110 purposes
Copy of this letter