

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-106548-09
Date:
August 10, 2009

Legend:

Husband	=
Wife	=
Date 1	=
Date 2	=
Son	=
Daughter 1	=
Daughter 2	=
Wife's Trust	=
Law Firm 1	=
Law Firm 2	=
Accountant	=
Accounting Firm	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=

Dear _____ :

This letter responds to a letter from your authorized representative dated November 12, 2008, and other correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Husband's generation-skipping transfer (GST) exemption to transfers to Trusts 1, 2, and 3 in Years 1 through 4 and requesting a ruling that Wife's GST exemption was automatically allocated at her death to Wife's Trust under § 2632(c) (redesignated as § 2632(e), effective June 7, 2001).

The facts and representations submitted are summarized as follows: On Date 1, Wife died, survived by Husband, Son 1 and Daughters 1 and 2. Her will provided for two residuary trusts: a marital trust for which Husband will be treated as the transferor for purposes of GST tax; and Wife's Trust to benefit Husband, Son 1, Daughters 1 and 2, and their issue. The Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Wife's estate was timely filed. However, no Schedule R was attached to the return, and no affirmative allocation of Wife's unused GST exemption was made to Wife's Trust.

On Date 2, Husband executed Husband's Family Trust, which, upon execution, was split into three irrevocable trusts: Trust 1 was named for Son and his issue; Trust 2 was named for Daughter 1 and her issue; and Trust 3 was named for Daughter 2 and her issue. Trusts 1, 2, and 3 terminate at Husband's death, and the remainders will be distributed to Wife's Trust to be held under its terms.

In Years 1-5, Husband transferred publicly traded securities and some cash to each of Trusts 1, 2, and 3. Husband relied on his certified public accountant (Accountant) at Accounting Firm to prepare the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Husband's transfers to Trusts 1, 2, and 3. On all five gift tax returns, Accountant reported the value of the transfers to each trust but did not allocate any part of Husband's GST exemption to Husband's transfers to Trusts 1, 2, and 3 for any year. Thus, for Years 1 through 4, no part of Husband's GST exemption was allocated to Trusts 1, 2, and 3. Husband's GST exemption was automatically allocated under § 2632(c) to the value of his transfers to Trusts 1, 2, and 3 in Year 5.

Section 2601 imposes a tax on every generation-skipping transfer. 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.

Under § 26.2632-1(d)(1), an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed under § 6075(a) for filing the return (including any extensions actually granted (the due date)).

Section 2632(c) (redesignated as § 2632(e), effective June 7, 2001) provides, that (1) any portion of an individual's GST exemption not allocated on or before the due date for filing the estate tax return for the individual's estate, will be deemed to be allocated (A) first, to property which is the subject of a direct skip occurring at the individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death. Section 2632(c)(2) provides that the allocation will be made among the properties described in subparagraph (1)(A) and the trusts described in subparagraph (1)(B), as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts. "Nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

Section 2632(c)(1), effective for transfers subject to the gift and estate tax after December 31, 2000, provides, in part, that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero.

Section 2632(c)(3)(A) provides that the term "indirect skip" means any transfer of property (other than a direct skip) subject to the gift tax made to a GST trust. Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Section 2632(c)(5)(A) provides that an individual may elect to have this subsection not apply to an indirect skip, or any or all transfers made by such individual to a particular 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 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)) and such allocation shall be effective on 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 the 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 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 301.9100-3 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. Husband is granted an extension of time of 60 days from the date of this letter to allocate his available GST exemption (after taking into account the automatic allocation in Year 5) to the Year 1

through Year 4 transfers to Trusts 1, 2, and 3, based on the gift tax values of those transfers on the dates of each transfer.

The allocation should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the years in which the transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

Based on the facts submitted and the representations made we also rule that, under § 2632(c) (redesignated as § 2632(e), effective June 7, 2001), Wife's GST exemption was automatically allocated to Wife's Trust at her death.

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, 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. Further, we are not ruling on whether Trust 1, 2, and 3 will have a zero inclusion ratio as a result of Husband's allocations of his GST exemption to his Year 1 through Year 4 transfers to the trusts.

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.

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

Sincerely,

Curtis G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: