

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201010004**
Release Date: 3/12/2010

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 2642.00-00, 9100.00-00,
9100.22-00

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-126209-09
Date:
November 19, 2009

Legend

Taxpayers =

Grantor =

Child 1 =

Child 2 =

Child 3 =

Date 1 =

Date 2 =

Year 1 =

Trust 1 =

Trust 2 =

Trust 3=

Company =

Attorney =

Accountant =

Dear _____ :

This responds to your representative's letter dated March 1, 2009 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 Taxpayers' generation-skipping transfer (GST) exemption to the transfers made to Trust 1, Trust 2 and Trust 3 (collectively, "Trusts") on Date 1.

Facts

Grantor created Trust 1 for the benefit of Child 1 and his issue, Trust 2 for the benefit of Child 2 and his issue, and Trust 3 for the benefit of Child 3 and his issue on Date 1 in

Year 1. On Date 1, Taxpayers each transferred an equal number of shares of Company stock to Trust 1, Trust 2, and Trust 3. Taxpayers intended to allocate GST exemption to the transfers made to Trusts.

It is represented that Taxpayers intended to allocate their GST exemption to the transfers to the Trust and retained Accountant to prepare their Forms 709, United States Gift (and Generation Skipping Transfer) Tax returns for Year 1. On Date 2, Attorney wrote to Accountant and informed him that Taxpayers' GST exemption must be allocated to the transfers Taxpayers made to Trusts on Date 1. On Taxpayers' Forms 709 for Year 1, Accountant erroneously listed the Date 1 gifts as being made outright to Child 1, Child 2, and Child 3, instead of in trust. Accountant also failed to allocate Taxpayers' GST exemptions to their respective transfers. Accountant's errors on the Year 1 Forms 709 were recently discovered during a review of Taxpayers' estate plans.

Taxpayers represent that to date no taxable distributions, taxable terminations, or any other GST taxable events have occurred with respect to any of the Trusts that would result in a GST tax liability on the part of any of the Trusts or their beneficiaries. They also represent that no additions have been made to any of the Trusts since Date 1. Taxpayers have sufficient GST exemption remaining and available to allocate with respect to the Date 1 transfers to Trusts.

Taxpayers are requesting an extension of time under § 2642(g) and § 301.9100-3 to make allocations of their GST exemptions to the Date 1 transfers to Trust 1, Trust 2, and Trust 3, that the GST exemption allocated to the transfers will be effective as of Year 1, and that the gift tax values of the transfers to Trust 1, Trust 2, and Trust 3 will be used in determining the amount of GST exemption allocated to each Trust.

Law and Analysis

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST 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. Section 2642(a) provides the method for determining the inclusion ratio.

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 of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), in effect at the time of the transfer, provided 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 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)(4) 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.

Section 2654(b)(1) and (2) provide that for purposes of the GST tax, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

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 determining the inclusion ratio under § 2642(a) shall be its value as finally determined for gift tax purposes (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). 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. Section 2642(g)(1)(B) further provides that 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 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 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, Taxpayers are granted an extension of time of sixty (60) days from the date of this letter to allocate their available GST exemption to the portion of Trust 1, Trust 2, and Trust 3 for which each is the transferor. The allocations will be effective as of the date of transfer, and will be based on the value of the assets transferred to each of the Trusts as finally determined for gift tax purposes.

The allocations should be made on Supplemental Forms 709 for Year 1 and filed with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Supplemental Form. Two copies of this letter are enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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.

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.

Sincerely,

Curt G. Wilson
Associate Chief Counsel (Passthroughs & Special
Industries)

Enclosures: Copy for § 6110 purposes
Two copies of this letter

cc: