



The facts and representations submitted are summarized as follows: Grantor established two irrevocable trusts for the benefit of his issue. Trust 1 was established on Date 1 and funded in Year 1. Trust 2 was established on Date 2 and funded in Year 1. Grantor made additional gifts to Trust 2 in Years 2 through 6.

Grantor instructed Law Firm 1 to prepare Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, to report Grantor's gifts to Trust 1 and Trust 2. Law Firm failed to properly allocate Grantor's GST exemption to the Years 1 through 6 gifts on the Forms 709. Law Firm 2 discovered the errors in Year 7 when attorneys for Grantor's estate reviewed the returns and discovered that Law Firm 1 failed to properly allocate Grantor's GST exemption to the gifts in those years.

### Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. 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 the years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount 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)(4)(i) 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 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)).

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 this paragraph, 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 under this paragraph, 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 GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) 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.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor's estate is granted an extension of time of 120 days from the date of this letter to allocate Grantor's available GST exemption to the Year 1 transfer to Trust 1 and the Years 1 through 6 transfers to Trust 2. The allocations will be effective as of the date of the transfers to the trusts and the value of the transfers to the trusts as determined for federal gift tax purposes will be used in determining the amount of Grantor's GST exemption to be allocated to the trusts.

These allocations should be made on supplemental Forms 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 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 or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we are not ruling on whether the trusts will have zero inclusion ratios as a result of the allocation of Grantor's GST exemptions to the transfers to the trusts. The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
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Enclosures

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