

**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:

Telephone Number:

In Re:

Refer Reply To:  
CC:PSI:B04  
PLR-162594-04  
Date: JUNE 08, 2005

**LEGEND:**

- Settlor =
- Daughter =
- Son-in-law =
- Grandchild 1 =
- Grandchild 2 =
- Trust 1 =
- Trust 2 =
- Corporation =
- Accounting Firm =
- Date 1 =
- Date 2 =
- Year 1 =
- Year 2 =
- a =
- b =

Dear :

This is in response to your letter dated August 23, 2004, requesting an extension of time under section 2642(g) of the Internal Revenue Code and section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Taxpayers' generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

Settlor established Trust 1 for the benefit of Grandchild 1 on Date 1 and Trust 2 for the benefit of Grandchild 2 on Date 2.

Paragraph 2.2 of each trust provides that during the grandchild's lifetime, the trustee is to distribute to the grandchild such amounts of income and principal as are necessary, when added to the funds reasonably available to the grandchild from all

other sources known to the trustee, to provide for the grandchild's health, support, maintenance, and education.

Paragraph 2.3 provides that the grandchild is to have a special power to appoint (outright, in trust or otherwise) all or any part of the income or principal of the trust to any of the grandchild's descendants; provided that the grandchild is not to have the power to appoint the principal to grandchild, grandchild's creditors, grandchild's estate, or the creditors of grandchild's estate. In addition, the grandchild is not to have the power to appoint income or principal in such a manner as to discharge any of the grandchild's legal obligations of support.

Paragraph 2.4 provides that upon the death of the grandchild, all remaining unappointed trust estate is to be distributed as provided in paragraph 3.2.

Paragraph 2.7 provides that Settlor and any other person acting individually or in a fiduciary capacity is to have the right at any time to add property acceptable to the trustee to the trust and such property when received and accepted by the trustee is to become part of the trust estate.

Paragraph 3.2 provides, in relevant part, that upon the death of the grandchild, the trustee is to divide the trust property into separate trusts of equal value, one share for each child of grandchild then living and one share for the descendants, if any, taken collectively on a per stirpes basis, of each child of grandchild who has died prior to that time. The trustee is to then divide a share for a deceased child of grandchild who has descendants then living, into separate parts for such descendants, per stirpes. Upon the death of the beneficiary of a trust, the separate trust is to terminate and all property comprising the principal is to be distributed in fee simple to the descendants of the beneficiary.

Paragraph 6.4 provides that the trusts created under the trust agreement, unless earlier terminated according to the terms of the trust agreement, are to terminate one day less than 21 years after the date of death of the last to survive of Settlor and the beneficiaries of these trusts who are living on the date of execution of the trust agreement and upon such termination each trust is to be distributed to the beneficiaries of that trust.

In Year 1, Daughter transferred to each of the trustees of Trust 1 and Trust 2 six shares of Corporation, valued at \$a. In Year 2, Daughter transferred to each of the trustees of Trust 1 and Trust 2 six shares of Corporation, valued at \$a, and an additional \$b of other shares of publicly traded stocks or mutual funds. Daughter and Son-in-law (the Taxpayers) each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return (gift tax return), for Year 1 and Year 2. The Taxpayers elected to treat the gifts as made one-half by each spouse under section 2513.

Daughter and Son-in-law retained Accounting Firm to prepare the Year 1 and Year 2 gift tax returns. Accounting Firm prepared and timely filed the Year 1 and Year 2 gift tax returns. However, with respect to the Year 1 and Year 2 gift tax returns,

Accounting Firm did not allocate the Taxpayers' available GST exemption on any of the gifts reported on the gift tax returns. This error was an oversight on the part of Accounting Firm. Additionally, the Year 2 transfer of \$a in shares of Corporation was inadvertently omitted from the Taxpayers' gift tax returns.

You have requested an extension of time under section 2642(g) and section 301.9100-3 to make a timely allocation of GST exemption under section 2632 with respect to Taxpayers' transfers in Year 1 and Year 2 to Trust 1 and Trust 2, effective as of the date of the transfers.

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 herspouse shall, for gift tax purposes, be considered as made one-half by donor spouse and on-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST), as defined in sections 2611 through 2613, made after October 26, 1986.

Section 2652(a)(2) and section 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under section 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 section 2513.

Under section 2631(a), as in effect for the years at issue in the present case, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under section 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 section 2631(a), once made, is irrevocable.

Section 2632(a) provides that any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for the 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)(i) provides, in part, 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 section 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 section 6075(b) for such transfer the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)).

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 section 2642(b)(1) or (2).

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. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 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 in subtitles E, G, H, and I.

Section 301.9100-3 sets forth the standards that the Commissioner uses 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. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving 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 section 301.9100-3 have been satisfied. Therefore, an extension of time to make a timely allocation of GST exemption with respect to Taxpayers' transfers to Trust 1 and Trust 2 in Year 1 and Year 2 is granted until 60 days after the date of this letter.

The allocation of GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

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

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.

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.

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,

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Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter