

PLR-100610-02

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4\PLR-100610-02

Date: OCTOBER 16, 2002

Re:

Legend:

Husband	=
Wife	=
University	=
Fund 1	=
Fund 2	=
Fund 3	=
Fund 4	=
Fund 5	=
B	=
C	=
D	=
E	=
F	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
CPA 1	=
CPA 2	=
\$w	=
\$x	=
\$y	=
\$z	=

Dear _____ :

This is in response to your December 28, 2001 submission in which you requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate Husband's and Wife's remaining GST exemption to five pooled income funds.

According to the facts submitted, in Year 1, the Board of Trustees of University and Husband and Wife entered into five separate pooled income fund agreements, Fund 1, Fund 2, Fund 3, Fund 4, and Fund 5 (collectively the Funds). Under the terms of each agreement, one of Husband's and Wife's five grandchildren, B, C, D, E, and F, would be entitled to receive income paid quarterly from his or her respective fund for his or her life. Upon the death of a grandchild, the remaining assets in the fund would pass to the University. In Year 1, Year 2, Year 3, and Year 4, Husband and Wife made total contributions to the Funds in the amounts of \$w, \$x, \$y, and \$z, respectively.

Husband's and Wife's accountant (CPA 1) prepared the federal gift tax returns for Husband's and Wife's Year 1 through Year 4 transfers to the Funds. On each of the Year 1 through Year 4 gift tax returns, Husband and Wife signified their consent to treat the gifts made in each year as being made one-half by each spouse, pursuant to § 2513. On the Year 1 through Year 4 returns, CPA 1 reported the transfers for gift tax purposes, treating the income interest of each respective grandchild as qualifying for the gift tax annual exclusion under § 2503(b). CPA 1 erroneously believed that under § 2642(c), each transfer would have a deemed inclusion ratio of zero for purposes of the Generation-Skipping Transfer (GST) tax. CPA 1 did not, therefore, allocate any GST exemption to the transfers.

In Year 5, Husband and Wife made additional transfers to the Funds for the benefit of their grandchildren. Because CPA 1 was semi-retired, CPA 1 referred Husband and Wife to CPA 2 for the preparation of the Year 5 gift tax return. On the Year 5 gift tax return, Husband and Wife signified their consent to treat the gifts made in that year as being made one-half by each spouse, pursuant to § 2513. CPA 2 prepared the Year 5 gift tax return and did allocate GST exemption to the Year 5 transfers. In the process of preparing the Year 5 return, CPA 2 discovered that no allocations of GST exemption had been made to the Year 1 through Year 4 transfers. CPA 2 notified CPA 1 of this discovery.

It is represented that in Year 1 through Year 5 distributions were made from the Funds to the grandchildren. No GST tax has been paid by any person on any of these distributions. Wife died in Year 6.

Husband and the executor of Wife's estate have requested an extension of time to allocate Husband's and Wife's remaining GST exemption to the Year 1 through Year 4 transfers to the Funds and that such allocations are to be made based on the gift tax value of the transferred assets to the Funds as of the dates of each transfer in Years 1 through 4.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer (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 inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 26.2632-1(b)(2)(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 26.2632-1(d)(1) provides that the executor may allocate GST exemption with respect to a lifetime transfer by a decedent of property that is not included in the transferor's gross estate on a Form 709.

Under § 2513(a)(1), a gift made by one spouse to any person other than his spouse is considered for purposes of the gift tax as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2652(a)(1)B provides that, except as provided in § 2652(a), or § 2653(a), the term "transferor" means-- in the case of any property subject to the tax imposed by chapter 12, the donor. An individual is treated as transferring any property with respect to which such individual is the transferor. Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

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, 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 § 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, 2001-34 I.R.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 generation-skipping 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 an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Under § 301.9100-1(c), 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) 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 the grant of 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. Taxpayers reported the transfer to the Funds as split gifts under § 2513. Accordingly, each taxpayer is treated as the transferor with respect to one-half of the transfer to the Funds for purposes of chapter 13. Therefore, Husband is granted an extension of time of 60 days from the date of this

letter to allocate his available GST exemption to the Year 1 through Year 4 transfer to the Funds for which he is the transferor. The executor of Wife's estate is granted an extension of time of 60 days from the date of this letter to allocate Wife's available GST exemption to the Year 1 through Year 4 transfers to the Funds for which she is the transferor. The allocations will be effective as of the date of each transfer to the Funds and the gift tax value of the transfers to the Funds will be used in determining the amount of GST exemption to be allocated to the Funds.

The ruling contained in this letter is 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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocations of GST exemption for Husband and Wife should be made on a Form 709. These forms are to be filed with the Internal Revenue Service, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter