

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200604002**

Release Date: 1/27/2006

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-100613-05  
Date: OCTOBER 07, 2005

Legend

- Grantors -
- Trust -
- Date -

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- Year 1 -
- Year 2 -
- Year 3 -
- Year 4 -
- Year 5 -
- S -
- I -
- U -
- V -

Dear :

This letter is in response to a letter dated December 24, 2004 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an allocation of Taxpayer's and Spouse's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date, Grantors established an irrevocable trust, Trust, for the benefit of their children and descendants of their children. In Year 1, Grantors transferred marketable securities valued at \$S and cash in the amount of \$I to Trust. Taxpayer and Spouse timely filed United States Gift (and Generation-Skipping Transfer) Tax Returns, Forms 709, (gift tax returns) to report those transfers to Trust and consented to split the gifts

pursuant to § 2513 for Year 1. However, the certified public accountant, who prepared the returns and on whose expertise Grantors relied, inadvertently failed to allocate Grantor's available GST tax exemptions to the transfers.

In Year 2, Grantors transferred cash in the amount of \$U to Trust. Grantors timely filed gift tax returns to report the Year 2 transfers to Trust and consented to split the gifts pursuant to § 2513 for Year 2. Again, the certified public accountant, who prepared the returns and on whose expertise Grantors relied, inadvertently failed to allocate Grantor's available GST tax exemptions to the transfers.

In both Year 3 and Year 4, Grantors transferred cash in the amount of \$V to Trust. The certified public accountant advised Grantors that gift tax returns were not required to be filed and, thus, no returns were filed and Grantors available GST exemptions were not allocated to the transfers.

In Year 5, an attorney advised Grantors that to they should have allocated their GST tax exemptions for the prior gifts to Trust on their Year 1 and Year 2 gift tax returns for Trust to be exempt from GST tax. In addition, the attorney advised Grantors that they should have filed gift tax returns for Year 3 and Year 4 in order to allocate their available GST exemptions to the transfers made in Year 3 and Year 4.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under section 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 2632(a)(1) 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 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, 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, 2001-2 C.B. 189, provides that under section 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 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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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 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 § 301.9100-3 have been satisfied. Therefore, Grantors are each granted an extension of time of 60 days from the date of this letter to make allocations of their respective GST exemptions to Trust for Year 1, Year 2, Year 3, and Year 4. An individual or supplemental Form 709 should be filed for each taxpayer for Year 1, Year 2, Year 3, and Year 4. Each Form 709 should include a Notice of Allocation properly allocating the taxpayer's GST exemption to the transfers to Trust. The allocations will be effective as of the respective dates of the transfers to Trust, and the inclusion ratio of Trust will be determined based on the value of the transfers to Trust as determined for federal gift tax purposes and the amount of exemption allocated to Trust. A copy of this letter should be attached to each individual or supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. Copies are included for this purpose.

Except as expressly provided 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.

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 ruling, it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to the taxpayer's representative.

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,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: