

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-148421-05

Date: SEPTEMBER 20, 2006

Re:

Legend

Wife =

Husband =

Trust =

Date 1 =

x =

Accounting Firm =

Dear :

This is in response to a letter from your authorized representative dated May 25, 2006, and prior correspondence, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows: Wife established an irrevocable trust, Trust, on Date 1 for the primary benefit of Husband and Wife's children and their descendants. In Year, Wife transferred x Trust.

Accounting Firm prepared and Husband and Wife filed separate Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Year and elected, under § 2513, to treat the gifts as made one-half by Wife and one-half by Husband. However, in the preparation of the Forms 709, Accounting Firm inadvertently failed to allocate any of Husband's or Wife's GST exemption to Trust on their respective

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Forms 709. The errors were discovered in a recent review of Husband and Wife's estate planning.

Husband and Wife each request (i) an extension of time to make allocations of their respective GST exemption to transfers in Year and (ii) that such allocation be based on the value of the property transferred to Trust on the date of the transfer so that the inclusion ratio of Trust is zero.

### 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 tax years at issue, provided 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

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

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)(2) 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)).

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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).

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 §§ 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 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. Under § 26.2652-1(a)(4), for GST purposes, Husband and Wife are each treated as the transferor of one-half of the value of the entire property transferred to Trust. Therefore, Husband is granted an extension of time of 60 days from the date of this letter to make an allocation of

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Husband's available GST exemption, with respect to Husband's transfer to Trust in Year. In addition, Wife is granted an extension of time of 60 days from the date of this letter to make an allocation of Wife's available GST exemption, with respect to Wife's transfer to Trust in Year. The allocations will be effective as of the respective date of the transfers, and for purposes of determining the inclusion ratio, the assets transferred to Trust will be valued as of the respective date of the transfers to Trust. Assuming sufficient GST exemption is allocated by Husband and Wife, Trust's inclusion ratio will be zero.

Husband and Wife should make these allocations on supplemental Forms 709 for Year. The forms should be 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 forms.

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.

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,

William P. O'Shea  
Acting Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter