

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-170054-03

Date:
June 17, 2005

LEGEND

- Husband =
- Wife =
- Date 1 =
- Trust =
- Policy 1 =

- Date 2 =
- Policy 2 =

- Date 3 =
- Policy 3 =

- Policy 4 =
- Year 1 =
- \$a =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Date 4 =

Dear . :

This is in response to your authorized representative's letter dated December 5, 2003, and subsequent correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of Husband's and Wife's respective generation-skipping transfer (GST) tax exemptions.

The facts and representations submitted are summarized as follows: On Date 1, Husband created Trust, an irrevocable life insurance trust with GST potential. Under

the terms of Trust, Wife and other beneficiaries are given withdrawal rights when assets are added to the trust estate; however, the amount withdrawable by Wife in any calendar year may not exceed \$10,000.

On Date 1, Husband transferred Policy 1 to Trust. On or about Date 2, Husband transferred Policy 2 to Trust. On Date 3, the trustee of Trust transferred the cash value of Policy 2 to Policy 3. On Date 3, Husband also transferred Policy 4 to Trust. Each of the transfers of the various life insurance policies to Trust was completed in Year 1.

Husband contributed \$a to Trust in Year 2, Year 3, Year 4, and Year 5 to allow the trustee to pay the premiums on Policy 3. Husband died on Date 4.

Wife and the personal representatives of Husband's estate now request that an extension of time be granted under § 2642(g) and § 301.9100-3 to make allocations of Husband's and Wife's respective GST exemptions to the transfers to Trust equal to the reported gift tax values of the transfers.

Section 2512(a) provides that if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

Section 25.2512-6(a) of the Gift Tax Regulations provides that the value of a life insurance contract or a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated by adding to the interpolated terminal service at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

Section 2601 imposes a tax on every generation-skipping transfer. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a), in effect at the time of the transfers, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that 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 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) 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(c)(1) provides, in part, that an allocation of GST exemption (including automatic allocation) to property subject to an estate tax inclusion period (ETIP) that is made prior to the termination of the ETIP cannot be revoked, but becomes effective no earlier than the date of any termination of the ETIP with respect to the trust. In addition, an allocation is effective at the termination of the ETIP during the transferor's lifetime if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the ETIP terminates (timely ETIP return).

Section 26.2632-1(c)(2)(i) provides, generally, that an ETIP is the period during which, should death occur, the value of transferred property would be includible (other than by reason of § 2035) in the gross estate of the transferor or the spouse of the transferor.

Section 26.2632-1(c)(2)(ii)(B) provides that for purposes of § 26.2632-1(c)(2), the value of transferred property is not considered as being subject to inclusion in the gross estate of the spouse of the transferor, if the spouse possesses with respect to any transfer to the trust, a right to withdraw no more than the greater of \$5,000 or 5 percent of the trust corpus, and such withdrawal right terminates no later than 60 days after the transfer to the trust.

Section 26.2632-1(c)(3)(iv) provides that in the case of an ETIP arising by reason of an interest or power held by the transferor's spouse under § 26.2632-1(c)(2)(i)(B), the ETIP terminates at the first to occur of: (A) the death of the spouse; or (B) the time at which no portion of the property would be includible in the spouse's gross estate (other than by reason of § 2035).

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)), or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

Section 2642(f)(1) provides, generally, that except as provided in regulations, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the ETIP (and the value of such property shall be determined under § 2642(f)(2)).

Section 2642(f)(2) provides that in the case of any property to which § 2642(f)(1) applies, the value of such property shall be its value for purposes of chapter 11 if such property is includible in the gross estate of the transferor (other than by reason of § 2035), or its value as of the close of the ETIP (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

Section 2642(f)(3) provides that for purposes of § 2642(f), the term “estate tax inclusion period” means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of the date on which there is a generation-skipping transfer with respect to such property, or the date of the death of the transferor.

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.

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 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the

electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

Notice 2001-50, 2001-2 C.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 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, Husband's estate and Wife are granted an extension of time of 60 days from the date of this letter to allocate Husband's and Wife's available GST exemptions to the transfers made to Trust in Year 1 through Year 5. The allocations will be effective as of the close of the respective ETIPs in Year 1 through Year 5 and the gift tax values of the transfers will be used in determining the amount of GST exemption to be allocated to each transfer. The

gift tax value of each life insurance policy transferred to Trust shall be determined in accordance with § 25.2512-6(a).

The allocations must be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709 filed. Copies are enclosed for this purpose.

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.

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.

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

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.

Sincerely,

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

Enclosures: Copy for § 6110 purposes
Copies of this letter