

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:B4
PLR-102281-15

Date:
July 15, 2015

Legend

Taxpayer =

Spouse =

Trust =

Date 1 =

Year 1 through Year 14 =

Year 1 through Year 3 =

Year 4 through Year 14 =

Year 15 =

x =

Attorney =

Accountant =

Dear :

This letter responds to your authorized representative's letter dated January 5, 2015, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an election out of the automatic allocation of generation-skipping transfer (GST) exemption under § 2632(c)(5)(A)(i)(II).

Facts

The facts and representations submitted are summarized as follows:

On Date, Year 1, a date prior to December 31, 2000, Taxpayer and Spouse established Trust, an irrevocable life insurance trust, for the benefit of their children and grandchildren.

Trust provides that, during the life of Taxpayer and Spouse, the trustee may distribute, in the trustee's sole discretion, income and principal to the children and grandchildren of Taxpayer and Spouse pursuant to an ascertainable standard. Trust additionally provides that, until Trust is terminated, the children and grandchildren of Taxpayer and Spouse may withdraw an amount of the property contributed to Trust each calendar year equal to the lesser of the maximum amount of the gift tax annual exclusion or the amount contributed by each of Taxpayer and Spouse divided by the number of the living children and grandchildren of Taxpayer and Spouse. Upon the death of the survivor of Taxpayer and Spouse, Trust provides for the creation of three separate subtrusts on a fractional basis, one for each of the children of Taxpayer and Spouse and one for the grandchildren of Taxpayer and Spouse.

In Year 1 through Year 14, Taxpayer and Spouse each made annual contributions to Trust, in the total amount of \$x. Year 1 through Year 3 are years preceding January 1, 2001. Year 4 and the succeeding years are years after December 31, 2000.

Attorney provided Taxpayer and Spouse with legal and tax advice in connection with the creation of Trust in Year 1. Attorney advised Taxpayer and Spouse that the transfers to Trust were eligible for the annual exclusion under § 2503(b) and, therefore, Taxpayer and Spouse were not required to file Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, to report the transfers. Attorney failed to advise Taxpayer and Spouse with respect to the GST implications of the transfers. Further, for the transfers to Trust in Year 4 through Year 14, Attorney failed to advise Taxpayer and Spouse of changes made to the GST tax, effective for gifts made after December 31, 2000, by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16) (EGTRRA). As described below, these changes automatically allocate a donor's unused GST exemption to lifetime transfers that are "indirect skips" to "GST trusts" unless the donor makes an affirmative election to have the automatic allocation rules not apply. Based on Attorney's advice, Taxpayer and Spouse did not

report any of the transfers to Trust in Year 1 through Year 14 on a Form 709 and did not make an affirmative election to opt out of the automatic allocation rules.

In Year 15, Taxpayer and Spouse engaged Accountant to prepare Forms 709 for each of Taxpayer and Spouse to report gifts in Year 15 (not to Trust). During this representation, Accountant learned of the existence of Trust and of the annual transfers to Trust. Accountant advised Taxpayer and Spouse of the GST implications of their previous transfers to Trust and advised of the ability to elect out of the automatic allocation of GST exemption. On timely filed Forms 709 for Year 15, Taxpayer and Spouse elected not to have the automatic allocation of GST exemption apply to Trust.

Taxpayer represents that had Taxpayer been properly advised regarding the automatic allocation of GST exemption and the ability to elect out of the automatic allocation rules, Taxpayer would have made the election to have the automatic allocation rules of § 2632(c) not apply to the transfers to Trust. Taxpayer further represents that to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would result in a GST tax liability on the part of any of the trusts or their beneficiaries.

Ruling Requested

Taxpayer requests an extension of time under § 301.9100-3 to make an election under § 2632(c)(5)(A)(i)(II) to have the automatic allocation rules not apply to Taxpayer's Year 4 transfer to Trust and all Taxpayer's subsequent transfers to Trust.

Law and Analysis

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

Section 2602 provides that the amount of the GST tax is the taxable amount multiplied by the "applicable rate." Section 2641(a) defines the term "applicable rate" as the product of the maximum Federal estate tax rate, and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that for purposes of chapter 13, the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) of 1 over the "applicable fraction." The term "applicable fraction," as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip).

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by

such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000, and to ETIPs ending after December 31, 2000. See EGTRRA, Pub. L. No. 107-16, § 561(a). Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST Trust. Section 2632(c)(3)(B) provides that the term "GST Trust" means a trust that could have a GST with respect to the transferor unless the trust is described in § 2632(c)(3)(B)(i) through (vi).

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have § 2632(c)(1) not apply to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that such an election may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that, in the case of an indirect skip made after December 31, 2000, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). The automatic allocation pursuant to § 26.2632-1(b)(2)(i) is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made. The automatic allocation of exemption applies even if an allocation of exemption is made to the indirect skip in accordance with § 2632(a).

Section 26.2632-1(b)(2)(ii) provides, in part, that the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip by making an election, as provided in § 26.2632-1(b)(2)(iii).

Section 26.2632-1(b)(2)(iii)(A) provides that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; (4) all future transfers made by the transferor

to all trusts (whether or not in existence at the time of the election out); or (5) any combination of paragraphs (b)(2)(ii)(A)(1) through (4) of this section.

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which: (1) for a transfer subject to § 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made. 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).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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, the time for making the allocation 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards the Commissioner will use 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). In accordance with § 2642(b)(1)(B) and Notice 2001-50, a taxpayer 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 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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules of § 2632(c) with respect to Taxpayer's Year 4 transfer and all subsequent transfers Taxpayer made to Trust.

Taxpayer should make the § 2632(c)(5)(i)(II) election on a Form 709 filed for Year 4. The Form 709 should be filed with the Internal Revenue 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 Taxpayer's Form 709. A copy is enclosed for this purpose.

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 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) of the Code 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.

Sincerely,

Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: