

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-107074-15

Date:
July 22, 2015

Legend

Decedent =

Accounting Firm =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your authorized representative's letter dated February 21, 2015 requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows:

In 2010, Decedent made gifts, including gifts not in trust to Decedent's grandchildren and other skip persons (Decedent's 2010 Direct Skips).

For many years, Decedent had engaged the services of Attorney to assist in Decedent's gift and estate planning and Accounting Firm to prepare any necessary tax

returns, including any necessary gift tax returns. Neither Attorney nor Accounting Firm advised Decedent of the rules affecting GSTs in 2010. Specifically, Decedent was not advised of the GST tax rate in effect in 2010 or of the rules under § 2632(b) regarding the automatic allocation of GST exemption and the ability to elect out of the automatic allocation of GST exemption by making an election under § 2632(b)(3).

Accounting Firm failed to prepare a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report Decedent's 2010 gifts. Therefore, Decedent did not file a 2010 Form 709 and did not elect out of the automatic allocation of GST exemption to Decedent's 2010 Direct Skips.

On Date 1, Decedent died. On Date 2, Decedent's personal representative filed a late Form 709 to report Decedent's 2010 gifts. On Date 3, Decedent's personal representative filed a supplemental 2010 Form 709 for Decedent.

You, as the executor of Decedent's estate, request an extension of time under § 301.9100-3 to make an election under § 2632(b)(3) to elect out of the automatic allocation rules with respect to Decedent's 2010 Direct Skips.

LAW AND ANALYSIS

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

Section 2612 provides that the term "direct skip" means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613 provides, in relevant part, that the term "skip person" means a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor.

Section 2602 provides that the amount of the tax imposed by § 2601 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 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 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that an individual's GST exemption may be allocated 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 return is required to be filed.

Section 2632(b)(1) provides that if an individual makes a direct skip during his lifetime, any unused portion of such individual's unused 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 direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred. Section 2632(b)(3) provides that an individual may elect to have § 2632(b) not apply to a transfer.

Section 26.2632-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that, if a direct skip occurs during the transferor's lifetime, the transferor's GST exemption not previously allocated (unused GST exemption) is automatically allocated to the transferred property (but not in excess of the fair market value of the property on the date of the transfer). The transferor may prevent the automatic allocation of GST exemption by describing on a timely-filed Form 709 the transfer and the extent to which the automatic allocation is not to apply.

Section 26.2632-1(b)(1)(ii) provides, in part, that a Form 709 is timely filed if it is filed on or before the date required for reporting the transfer if it were a taxable gift (i.e., the date prescribed by section 6075(b), including any extensions to file actually granted (the due date)). The automatic allocation of GST exemption (or the election to prevent the allocation, if made) is irrevocable after the due date. An automatic allocation of GST exemption is effective as of the date of the transfer to which it relates. Except as provided above, a Form 709 need not be filed to report an automatic allocation.

Section A of Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16 (EGTRRA) enacted § 2210 of the Code, which made chapter 13 (the GST tax) inapplicable to GSTs made in 2010. On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312 (124 Stat. 3296) (TRUIRJCA) became law, and § 301 retroactively reinstated GST taxes. However, § 302(c) of TRUIRJCA provides that the applicable tax rate for each GST occurring during 2010 is zero.

Notice 2011-66, 2011-35 I.R.B. 184, provides that because it is clear that a 2010 transfer not in trust to a skip person is a direct skip to which the donor would never want to allocate GST exemption, the IRS will interpret the reporting of an *inter vivos* direct skip not in trust occurring in 2010 on a timely filed Form 709 as constituting the payment of tax (at the rate of zero percent) and, therefore, as an election out of the automatic allocation of GST exemption to that direct skip.

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 (or election) shall be treated as if not expressly prescribed by statute.

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 election out of the automatic allocation rules, and the time for election 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 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). In accordance with § 2642(g)(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, you are granted an extension of time of 120 days from the date of this letter to make an election under § 2632(b)(3) that the automatic allocation rules do not apply to Decedent's 2010 Direct Skips. The election out of the automatic allocation rules of § 2632(b)(1) should be made on a supplemental Form 709 for 2010. The supplemental 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 the Supplemental Form 709. A copy is 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) of the Code provides that it may not be used or cited as precedent.

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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
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