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Person To Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-128313-15

Date:  
February 19, 2016

Legend

- Spouse
- Donor
- Date 1
- Date 2
- Date 3
- Year 1
- Year 2
- Trust 1
- Trust 2
- Trust 3
- Trust 4
- Trust 5
- x
- Company
- a
- b
- c
- d
- e
- Accountant
- Trust Company 1
- Trust Company 2

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letter dated August 24, 2015, and subsequent correspondence, 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 allocate Spouse's generation-skipping transfer (GST) exemption to certain trusts and to make an election to elect out of the automatic allocation of GST exemption to certain direct skips.

The facts and representations submitted are summarized as follows:

On Date 1, which is a date in Year 1, Donor created and funded Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 (Trusts), for the benefit of each of x grandchildren. Donor funded Trusts with shares of Company. Donor funded Trust 1 with shares valued at \$a, Trust 2 with shares valued at \$b, Trust 3 with shares valued at \$c, Trust 4 with shares valued at \$d, and Trust 5 with shares valued at \$e.

Donor hired Trust Company 1 to prepare Donor's and Spouse's Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1. Donor and Spouse elected to gift-split on their Forms 709. Accountant, an employee of Trust Company 1, reported the gifts made in Year 1, but did not allocate GST exemption for the transfers. Donor and Spouse timely filed their Forms 709 before Date 2, the due date of the returns.

During Year 2, Donor made gifts to several trusts and direct skips to several individuals. It is represented that Donor did not intend to allocate GST exemption to the direct skips. Donor hired Trust Company 2 to prepare Donor's and Spouse's Forms 709 for Year 2. Donor and Spouse elected to gift-split on their Forms 709. The representatives of Trust Company 2 prepared the Forms 709 but did not inform Donor and Spouse that they had to elect out of the deemed allocation rules of § 2632(b) in order not to have their GST exemption automatically allocated to the direct skips. Consequently, Trust Company 2 failed to make the proper written election out of the deemed allocation rules on Donor's and Spouse's Year 2 Forms 709. Spouse died on Date 3.

You have requested the following rulings:

1. An extension of time under § 2642(g) and § 301.9100-3 to allocate Spouse's GST exemption to the Year 1 transfers to Trusts 1 through 5.
2. An extension of time under § 301.9100-3 to have the deemed allocation of GST exemption to lifetime direct skips under § 2632(b) not apply to certain direct skips made by Spouse in Year 2.

## LAW AND ANALYSIS

### Rulings 1 and 2

Section 2513(a)(1) provides, generally, that a gift made by one spouse to any person other than the donor's spouse is considered for purposes of the gift tax as made

one-half by the donor and one-half by the donor's spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

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 2602 provides that the amount of the tax imposed by § 2601 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 2631(a), as in effect for Year 1, provides that for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 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 2631(a), as in effect for Year 2, 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 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

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 § 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 26.2632-1(b)(4)(i) 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 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, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

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 estate tax inclusion period, its value at the time of the close of the estate tax inclusion period.

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), 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 § 2642(g).

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 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. Under § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations, 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 is 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) under the provisions of § 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 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 the grant of 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. Therefore, Spouse is granted an extension of time of 120 days from the date of this letter to allocate his available GST exemption to the Year 1 transfer to Trusts 1 through 5. The allocations will be effective as of the respective date of the transfers and the value of the transfers as determined for federal gift tax purposes will be used in determining the amount of GST exemption to be allocated to each trust.

Spouse is also 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 the Year 2 direct skips.

The allocations should be made on supplemental Forms 709 for Year 1 and Year 2. The Forms 709 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 supplemental Forms 709. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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,

Associate Chief Counsel  
Passthroughs and Special Industries

*Leslie H. Finlow*

By: Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc: