

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:B04
PLR-139704-15

In Re:

Date:
March 15, 2016

Legend:

Taxpayer	=
Spouse	=
Trust	=
Date 1	=
Date 2	=
Year 3	=

Dear _____ :

This letter responds to your authorized representative's letter of October 23, 2015, and subsequent correspondence, requesting an extension of time under § 2642 of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect out of the deemed allocation of generation-skipping transfer (GST) exemption to transfers to a trust.

The facts, as represented, are as follows. On Date 1, a date before December 31, 2000, Taxpayer created Trust, an irrevocable trust for the benefit of Spouse and Taxpayer's four children. Trust has GST tax potential.

On Date 2 and Date 3, dates after December 31, 2000, Taxpayer made cash gifts to Trust. Taxpayer and Spouse retained tax professionals to prepare the Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting the Date 2 and Date 3 gifts to Trust. On these returns Taxpayer and Spouse elected to treat gifts made by either as made by both under § 2513. On the returns the tax professionals, however, failed to elect out of the deemed allocation of GST exemption by § 2632(c)(5).

Taxpayer and Spouse represent that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give

rise to a GST tax liability.

Taxpayer and Spouse request an extension of time to elect out of the deemed allocation of GST exemption under § 2632(c) to the gifts Taxpayer made to Trust on Date 2 and Date 3 and any future gifts made to Trust.

Law and Analysis:

Section 2513(a) provides generally that, for gift tax purposes, if the parties' consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every GST. 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 imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST 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.

Section 2631(a) in effect on the dates in question, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount 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(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under § 2010(c) for such calendar year.

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, as defined in § 2632(c)(3)(B).

Section 2632(c)(5)(A)(i) provides that an individual may elect to have § 2632(c) not apply to (I) an indirect skip or (II) any or all transfers made by such individual to a

particular trust.

Section 2632(c)(5)(b)(i) provides that an election under § 2632(c)(5)(A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

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 this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), 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.

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.

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 § 301.9100-1 through 301.9100-3.

Sections 301.9100 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 9100-2 provides an automatic extension of time for making certain elections. 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, 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, in part, 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 are satisfied. Therefore, Taxpayer and Spouse are granted an extension of time of 120 days from the date of this letter to elect out of the deemed allocation of GST exemption under § 2632(c) for the gifts to Trust on Date 2 and Date 3 and any future gifts made to Trust.

The elections should be made on Supplemental Forms 709 for the years in which the Date 2 and Date 3 gifts occurred and filed with the Internal Revenue Service Center Cincinnati Service Center - Stop 82, Cincinnati, OH 45999, for association with the Form 709. You should attach a copy of this letter to the Supplemental Forms 709.

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

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 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 4
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: