

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-137293-16
Date:
March 06, 2017

Re:

Legend

Donor =
Date 1 =
Trust =
x =
Accountant =

Dear :

This letter responds to the letter dated November 28, 2016, submitted by your authorized representative, 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 allocate generation-skipping transfer (GST) exemption to a transfer to a trust.

FACTS

The facts and representations submitted are as follows.

On Date 1, a date prior to December 31, 2000, Donor created an irrevocable trust, Trust. Trust has GST potential. On the same date, Donor transferred \$x to Trust.

Accountant prepared and timely filed Donor's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the transfer to Trust. However, Accountant improperly reported the gift on Schedule A, Part 2 (Gifts That are Direct Skips and are Subject to Both Gift Tax and Generation-Skipping Transfer Tax). On Schedule C, Computation of Generation-Skipping Transfer Tax, Accountant improperly reported an allocation of Donor's GST exemption on the incorrect line in Part 2 (GST Exemption Reconciliation) and failed to attach a Notice of Allocation. These errors were discovered subsequently when Donor retained new estate planning counsel. Donor

represents she has sufficient GST exemption available to allocate to the Date 1 transfer to Trust.

Donor requests an extension of time to make an election under § 2642(g) and §§ 301.9100-1 and 301.9100-3, to allocate GST exemption to the Date 1 transfer to Trust, effective as of the date of the transfer to Trust.

LAW AND ANALYSIS

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 one 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, and the denominator of which is the value of the property transferred to the trust.

Section 2631(a), as in effect on Date 1, provided that for purposes of determining the inclusion ratio, 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 2632(a)(1) 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 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.

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.

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).

Section 301.9100-3(a) provides, in part, that 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Donor is granted an extension of time of 120 days from the date of this letter to allocate her available GST exemption to the transfer made to Trust on Date 1.

The allocation should be made on a supplemental Form 709 and 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 return.

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 your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner

By: _____
Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of the letter
Copy for § 6110 purposes