

**Internal Revenue Service**

Number: **201803001**

Release Date: 1/19/2018

Index Number: 2632.00-00, 2642.01-00,  
9100.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-109413-17

Date:  
September 18, 2017

Re:

LEGEND

Donor =

Child =

Accountant =

Attorney =

Trust =

Date =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Years 2 through 8 =

Years 9 through 12 =

Year 13 =

Year 14 =

x =

Company =

a =

b =

c =

d =

Dear :

This letter responds to a letter from your authorized representative dated January 24, 2017, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations.

The facts and representations submitted are summarized as follows. On Date, Donor established Trust, an irrevocable trust, for the primary benefit of Child. Although Trust has generation-skipping transfer (GST) potential, a portion of Trust has the potential to be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer.

In Year 1, Donor transferred  $\underline{x}$  shares of Company stock to Trust. In each of Years 2 through 8, Donor transferred  $\$a$  in cash to Trust. In each of Years 9 through 12, Donor transferred  $\$b$  in cash to Trust. In Year 13, Donor transferred  $\$c$  in cash to Trust and transferred  $\$d$  in cash to Trust in Year 14. Years 1 through 3 are prior to 2001, and Years 4 through 14 are after 2000.

Donor retained Accountant and Attorney for advice on reporting the transfers and preparing any necessary Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Return. At all times, Donor indicated his intention that Trust be exempt from GST tax.

Accountant prepared a Year 1 Form 709 on which Donor reported his Year 1 transfer to Trust. However, in preparing this form, Accountant failed to allocate Donor's available GST exemption to the transfer to Trust. No Forms 709 were prepared or filed for Years 2 through 14 based on Accountant's and Attorney's advice that filing Forms 709 was not necessary.

It is represented that Donor has sufficient GST exemption to allocate to the transfers.

Donor requests an extension of time under § 2642(g) and § 301.9100-3 to: (i) allocate GST exemption to his transfers to Trust in Years 1 through 3 and (ii) elect under § 2632(c)(5)(A)(ii) to treat Trust as a GST trust with respect to all transfers made by Donor to Trust.

### Law and Analysis

Section 2601 imposes a tax on every GST, which 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 GST tax 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 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 applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of 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) reduced by the sum of certain taxes and charitable deductions.

Under § 2631(a), individuals are 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 for purposes of determining the inclusion ratio. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods (ETIPs) ending after December 31, 2000. See 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)(ii) provides that an individual may elect to treat any trust as a GST trust for purposes of § 2632(c) with respect to any or all transfers made by such individual to such trust.

Section 2632(c)(5)(B)(ii) provides, in part, that an election under § 2632(c)(5)(A)(ii) 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)(3)(i)(C) of the Generation-Skipping Transfer Tax Regulations provides that a transferor may elect to treat any trust as a GST trust (GST trust election), without regard to whether the trust is subject to § 2642(f), with respect to (A) any current-year transfer (or any or all current-year transfers) by the electing transferor to the trust, (B) any selected future transfers, (C) all future transfers by the electing transferor to the trust, or (D) any combination of these.

Section 26.2632-1(b)(3)(ii) provides that to make a GST trust election, the transferor must attach a statement (GST trust election statement) to a Form 709 filed on or before the due date for timely filing the Form 709 for the calendar year in which the first

transfer to be covered by the GST trust election is made (whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year). The GST trust election statement must identify the trust, specifically describe or otherwise clearly identify the transfers to be covered by the election, and specifically provide that the transferor is electing to have the trust treated as a GST trust with respect to the covered transfers.

Section 26.2632-1(b)(4)(i) provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

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, 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)).

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)(1)(A), which was enacted into law on June 7, 2001.

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 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 § 301.9100-3.

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 6 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 due date is prescribed by a regulation (and not expressly provided by statute). Under §301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. 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) 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. Donor is granted an extension of time of 120 days from the date of this letter to allocate GST exemption to his gifts made in Year 1, Year 2, and Year 3. The allocations will be effective as of the 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 Donor's GST exemption to be allocated. The allocation of GST exemption for Year 1 should be made on a supplemental Form 709 for that year. The allocations for Year 2 and Year 3 should be made on Forms 709 for those years.

Likewise, Donor is granted an extension of time 120 days from the date of this letter to elect to treat Trust as a GST trust for purposes of § 2632(c) with respect to the Year 4 transfer and all subsequent transfers by Donor to Trust. The automatic allocation rules of § 2632(c) will automatically allocate Donor unused GST exemption to Trust. The value of the transfers to Trust, as determined for federal gift tax purposes, will be used in determining the amount of Donor's unused GST exemption to be allocated to Trust. The election to treat Trust as a GST trust should be made by filing a Form 709 for Year 4 that includes the fair market value of the property transferred to Trust in Year 4 and on which Donor makes the election to treat Trust as a GST trust for purposes of § 2632(c) with respect to the current year and all subsequent transfers made by Donor to Trust.

Donor's supplemental Form 709 for Year 1 and Forms 709 for Year 2, Year 3, and Year 4 should be filed with the Internal Revenue Service, Cincinnati Service Center, Cincinnati, Ohio 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, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code.

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 and Special Industries)

*Karlene Lesho*

Karlene Lesho  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
Copy of letter for § 6110 purposes

cc: