

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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March 12, 2019

LEGEND

Settlor	=
Spouse	=
Year	=
Date 1	=
Trust	=
Trust 1	=
Trust 2	=
Trust 3	=
Child 1	=
Child 2	=
Child 3	=
x	=
LP	=

Dear :

This letter responds to the letter dated September 12, 2018, submitted by your authorized representative, requesting a ruling that the automatic allocation rules under § 2632(c) of the Internal Revenue Code (Code) apply to the transfers made by Settlor and Spouse in Year.

FACTS

The facts submitted and the representations made are as follows:

On Date, in Year (a date after December 31, 2000), Settlor established an inter vivos irrevocable trust, Trust. Trust established three separate trust shares, Trust 1, Trust 2, and Trust 3 (individually, Child's Trust), for the benefit of each of Settlor and Spouse's three children, Child 1, Child 2, and Child 3, respectively.

Pursuant to Paragraph B 2 of Trust, the trustee shall pay to or apply for the benefit of the beneficiary so much of the income and principal of the beneficiary's share as the trustee determines necessary for the beneficiary's support, health, maintenance and education. After the beneficiary attains the age of thirty years, the trustee shall pay to or apply for the benefit of the beneficiary the entire net income of the beneficiary's share. The beneficiary shall have a limited power to appoint, upon the beneficiary's death, all or any part of the balance of the share set aside for the beneficiary, outright or in trust, in favor of any person or persons other than the beneficiary, the beneficiary's estate, the creditors of the beneficiary or the creditors of the beneficiary's estate, provided that the power may only be exercised by the beneficiary after he or she has attained the age of thirty-four years.

If the beneficiary is survived by issue of Settlor's parents and the distribution of principal from the share of such issue upon the death of the beneficiary would result in the imposition of generation-skipping transfer (GST) taxes, the beneficiary shall have a general power to appoint the balance of the share, effective upon the beneficiary's death, to or for the benefit of any one or more of the beneficiary's creditors.

Upon the beneficiary's death, any portion of the remaining balance for which the beneficiary has not exercised such power of appointment effectively shall be divided into separate shares, by representation, among the issue of the beneficiary who survive the beneficiary, or if there are no such issue who survive the beneficiary, the balance shall be divided into separate shares, by representation, among the living issue (who are also the living issue of Settlor) of the nearest ancestor of such beneficiary. Each share shall be held as a separate trust.

On Date, Settlor transferred an  $x$  percent interest in LP, a limited partnership, to each Child's Trust.

Settlor and Spouse retained tax professionals to prepare their Year Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Settlor and Spouse consented, under § 2513, to treat the gift made on Date as made by both of them. The Year Forms 709 were timely filed. The Date transfers to each Child's Trust were incorrectly reported on Forms 709, Schedule A, Part 1-Gifts Subject Only to Gift Tax instead of on Schedule A, Part 3-Indirect Skips. Furthermore, the automatic allocation of the GST exemption was not reported on Schedule C, Computation of Generation-Skipping Transfer Tax.

You request a ruling that Settlor and Spouse's respective GST exemption was automatically allocated to the Date transfers to each Child's Trust under the automatic allocation rules of § 2632(c).

## LAW AND ANALYSIS

Section 2513(a) provides, generally, that 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 and one-half by the donor's 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 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) provides the method for determining the inclusion ratio.

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) provides that any allocation by an individual of his 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 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 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, in relevant part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, that an indirect skip is a transfer of property to a GST trust as defined in § 2632(c)(3)(B) provided that the transfer is subject to gift tax and does not

qualify as a direct skip. In the case of an indirect skip made after December 31, 2000, to which § 2642(f) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). The automatic allocation is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made.

In this case, the terms of Trust satisfy the definition of a GST trust under § 2632(c)(3)(B). Therefore, the transfers that Settlor and Spouse made to each Child's Trust established under the terms of Trust in Year satisfy the definition of indirect skips under § 2632(c)(3)(A) and § 26.2632-1(b)(2)(i). Pursuant to § 2632(c)(1), the GST exemption of Settlor and Spouse was automatically allocated to the transfers that they made to each Child's Trust in Year. Accordingly, based upon the facts submitted and the representations made, we conclude that Settlor's and Spouse's respective available GST exemption was automatically allocated to the Year transfers to each Child's Trust.

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

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.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman

Chief, Branch 4

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy for §6110 purposes

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